

A COMPARISON OF NEW PROVINCIAL PLANNING LAWS

MG BLOEM



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Town and Regional Planning at the University of Stellenbosch

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DECLARATION

I, the undersigned, hereby declare that the work contained in this assignment is my own original work, and that I have not previously in its entirety or in part submitted it at any university for a degree.

ABSTRACT

In terms of the Constitution (108 of 1996) provinces are given the responsibility for planning. Following the history of provincial planning it can be seen that the context of spatial planning have changed dramatically. This can be linked to changes in planning theory.

The legal and policy environment for provincial planning have been shaped by different national departments concerned with planning. The Development Facilitation Act (67 of 1995) a key piece of legislation moved towards a normative based system for planning.

Provinces were given the opportunity to introduce provincial specific legislation for planning. Since 1994 only four provinces the Western Cape, Northern Cape, Gauteng and KwaZulu-Natal have introduced Acts or Bills.

To assist the remaining five provinces in introducing province specific planning legislation it is important to establish if the different systems are moving towards conformity. Through analysis of the different systems, mechanisms and institutions, a comparison and evaluation of the different Act and Bills it was established that the provincial planning systems are to a large extent similar and in deed moving towards conformity.

OPSOMMING

Provinsies is verantwoordelik vir beplanning volgens bepalings in die Grondwet (108 van 1996). Deur 'n historiese oorsig van provinsiale beplanning word dit duidelik dat die konteks van ruimtelike beplanning dramaties oor tyd verander het. Hierdie verandering kan gekoppel word aan verandering in beplanningsteorie.

Die wetlike en beleidsomgewing van provinsiale beplanning is dinamies. Hierdie veranderende omgewing word geskep deur die invloed van verskillende nasionale departemente wat betrokke is by beplanning. 'n Toonaangewende wet die Wet op Ontwikkelingsfasilitering (67 van 1995) het beweeg na 'n normatief gebasseerde sisteem vir beplanning.

Provinsies word die geleentheid gebied om wetgewing daar te stel wat handel oor beplanning. Sedert 1994 het slegs vier provinsies – die Wes-Kaap, Noord-Kaap, Gauteng en KwaZulu-Natal wette of wetsontwerpe opgestel.

In 'n poging om die oorblywende provinsies te help om hul eie wetgewing op te stel is dit van belang om te bepaal tot watter mate die verskillende sisteme van provinsiale beplanning beweeg na konformiteit. Deur 'n analise en vergelyking van die verskillende sisteme, meganismes en instellings, gevolg deur 'n evaluering, is daar bevind dat die provinsiale beplanningsisteme ooreenkomste toon en daadwerklik beweeg na konformiteit.

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CHAPTER 1

INTRODUCTION

1.1 THE PROBLEM

The evolution of the provincial planning system in South Africa was influenced and shaped by different government ideologies, approaches and methods through time. In 1994 a democratic elected government was faced with the heritage of a fragmented, complex and unequal planning system.

The Constitution, Act 108 of 1996, with emphasis on the Bill of Rights set the foundation for social transformation to a democratic society. Provinces in terms of the Constitution, have concurrent powers over planning and related matters.

On national level the transformation to a new planning system was introduced by the Development Facilitation Act (Act 67 of 1995), providing a coherent framework for land development.

Provinces were given the option to adopt provincial legislation for planning and related matters. Since 1994 only four provinces have introduced Act or Bills. It is therefore important to analyse the established provincial planning systems to evaluate if they are moving towards conformity. This will be important for the remaining five provinces who still have not introduced provincial planning legislation. Effective systems and mechanisms can be identified that could be introduced by those provinces and through the process help them by sharing information, enhancing their capacity and deepening democracy.

1.2 AIMS/HYPOTHESIS

The hypothesis that will be tested in this study is that provincial planning systems are moving towards conformity.

This study will aim to follow the historic development of provincial planning in South Africa; follow planning theory development; contextualise provincial planning in the legal and legislative framework; analyse the different planning systems introduced through provincial legislation; evaluate the systems and mechanisms against criteria; and to draw conclusions.

The provincial planning systems will be discussed in terms of:

- history of provincial planning in South Africa (Chapter 2)
- development in planning theory (Chapter 3)
- contextualising the legal and policy framework (Chapter 4)
- analysing the different planning systems introduced (Chapter 5)
- evaluation against criteria (Chapter 6)
- concluding remarks and synthesis (Chapter 7).

1.3 RESEARCH METHOD

The researcher used a plurality of research methods:

- a comparative literature study,
- a study of relevant policy and legislation,
- personal communications,
- input from the study leader, and
- the personal opinion of the researcher.

CHAPTER 2

PLANNING HISTORY IN SOUTH AFRICA

2.1 INTRODUCTION

History and theory are sometimes taught in conjunction because our theoretical motions today are largely legacies from the past. Intellectual histories of planning show the evolution of ideas that have informed planning over the century and that may still do so today (Friedmann, 1987; Hall 1988 as sighted in Fischler, 2000: 233).

Interaction between history and planning can be useful because insights from contemporary theory can stimulate historical research and because historical analysis can enrich our thinking on contemporary planning (Fischler, 2000: 223). This constitutes the reason for a brief overview of the development of planning systems in South Africa.

South Africa's town planning originates from contemporary English legislation and United States of America's zoning concepts. The most important legislative influences can be summarized in Table 2.1. The influences are visible in the development of South African provincial planning legislation through time and it is important to discuss the extent of these influences.

2.2 BRITISH INFLUENCE

According the Green Paper on Development and Planning (1999: 16) the British planning ideology, approaches and methods had a great influence on planning in South Africa. The Public Heath Acts of 1850, 1875 and the Housing Act for Working Classes of 1890 set the legislative framework for planning laws. The Housing and Town Planning Act of 1909 was the first effort to control new development in Britain.

The Town and Country Planning Act of 1932 (introducing control over existing towns) was the general model on which the Townships Ordinance 33 of 1934 as well as other provincial ordinances were based on (Claassen, 2000a: 1). Town Planning in South Africa followed on

the same basic principles with a bias towards the guiding and controlling of new development rather than towards reconstruction (Floyd, 1960: 9).

TABLE 2.1

THE EVOLUTION OF PLANNING LAW

	USA / RSA	ENGLAND
1850		Industrial Revolution (Public Health Act <i>circa</i> 1850 Public Health Act <i>circa</i> 1875 Housing for the Working Classes Act <i>circa</i> 1890)
1900	<i>New York City Zoning 1916</i> <i>Euclid vs Ambler Realty 1922</i> <i>Standard State Zoning Enabling Act 1924</i>	Housing & Town Planning Act 1909
1925	<i>Standard City Planning Enabling Act 1927</i> Transvaal Township and Town Planning Ordinance (11 of 1931) Cape Township Ordinance (33 of 1934)	Town Planning Act 1925 Town & Country Planning Act 1932 Town & Country Planning Act 1947 New Town & Green Belt policies
1950		Town & Country Planning Act 1968
1975	Land Use Planning Ordinance (15 of 1985)	Town & Country Planning Act 1990

Adopted from (Claassen, 2000a: 4)

The Town and Country Planning Act of 1947 contained some of the most drastic and far reaching provisions ever enacted affecting the ownership of land. The new Act expropriated all development rights, meaning that the development rights of a property were limited to the legal use it was currently put to. The implication was that permission was required for any change in land use (Claassen, 2000a: 1). Development plans were also introduced as a more pro-active mechanism for planning.

The major changes since 1947 that influenced South African town planning was the Town and Country Planning Act of 1968 that introduced structure plans and local plans. These structure plans were a pro-active planning mechanism with broad policy guidelines to cover large areas (a whole county). The local plans (drawn up by district councils – similar to South African municipalities) usually dealt with areas where developments were intended (Claassen, 2000a: 2).

Since the 1968 the system is mainly still in place, except for the provision of several new types of plans, the unitary development plan and the action area plan. These plans together with new planning concepts like enterprise zones, outline planning permission and simplified planning zones were introduced with the Town and Country Planning Act 1990. The unitary development plan covers issues for example the use of land, conservation of natural beauty, improvement of the physical environment and the management of traffic (Claassen, 2000a: 4).

Environmental impact assessments became only recently legally enforceable with England's entrance into the European Union whereby the European Council regulations (Council Directives 85/337/EEC and 97/11/EEC) has to be complied with (Claassen, 2000a: 3).

2.3 UNITED STATES OF AMERICA'S INFLUENCE

Planning in the United States of America arose from the need to protect property from the uncontrolled penetration of undesirable development in residential areas (Claassen, 2000b: 1). The 1916 New York City Zoning Ordinance is usually regarded as the first comprehensive

zoning ordinance in the United States. It was the successful outcome of an open campaign to stop changes that were taking place on Fifth Avenue (Cullingworth, 1997: 59).

Zoning was part of the scientific management movement, which swept through America in the first quarter of the twentieth century. The moral justification for control over land use rights stems from a philosophy that there should be a balance between absolute freedom (no development restrictions) and absolute certainty (strong control over development) (Claassen, 2001c: 1-2). Rose (1979) extensively discusses the payoff between these two ideals and shifts of importance coincide with shifts in planning theory.

Zoning was seen as the instrument for providing the necessary security against both unwanted development and legal challenge (Cullingworth, 1997: 59). In 1924 the Standard State Zoning Enabling Act was introduced, and within a year, nearly a quarter of the states had passed enabling acts that were modelled substantially on the Standard Act (Cullingworth, 1997:62).

It was only in 1926 that the Supreme Court dealt with zoning's constitutionality in the case of *Euclid vs. Amber Realty*. The Supreme Court upheld the constitutionality of the Euclid zoning ordinance, and thus put its seal of approval on comprehensive zoning (Cullingworth, 1997:63).

However it failed in providing any "planning" component as it was primarily concerned with the protecting of existing property interest rather than with providing for future needs (Cullingworth, 1997: 60).

To remedy the shortcomings the Standard City Planning Enabling Act was adopted in 1927. This act was not as widely adopted as the zoning law (Claassen, 2000b: 2). It is important to note that not all cities adopted zoning control for example Houston, Texas. However these cities have a form of indirect zoning through private deeds that control development.

Comprehensive plans serve as policy documents for planning in the US cities and can include development strategies (a form of strategic planning) that are reviewed annually (Claassen, 2000b: 4).

The powers granted by the Supreme Court with the *Euclid vs. Amber Realty* ruling has in the 1990's been challenged by "takings" issue – the compulsory paying of compensation for the change in land value (lower) to due to government action. Restrictive zoning and restrictions for environmental conservation purposes are seen as tantamount to "taking" the land under the Fifth Amendment of the US constitution (Tibetts, 1995: 4-9).

In the light of court cases like *Lucas vs. South Carolina Coastal Council* and *Dolan vs. City of Tigard* in which the "takings" principle was successful, government is forced to be more careful with restrictive measures. Government will have to prove that the harm that will be brought about if the restriction is not adhered to, will outweigh the cost to the owner because of the restriction (Claassen, 2000b: 5). Environmental impact assessments would be the ideal mechanism to determine the effects.

2.4 SOUTH AFRICAN PROVINCIAL PLANNING

A brief outline of the most important planning legislation on provincial level will be followed by a discussion of the main mechanisms that were introduced. Provincial level of government was given the authority to introduce ordinances for regulating planning related matters.

The 1910 "Union Constitution assigned five aspects to provincial governments. Local government was one of these, which eventually included town planning. Only the most important ordinances adopted by the different provinces will be discussed so if special reference is not made to certain provinces it does not mean that they did not adopt similar ordinances.

The first South African town planning ordinance was the Transvaal Townships and Town-Planning Ordinance (11 of 1931). It was based on English legislation, principally the 1925 Town Planning Act and drafts of the 1932 Town and Country Planning Act (Price and Cameron, 1981: 78). The idea of zoning came from United States of America's zoning ordinances. Natal and the Cape followed closely the model provided by the Transvaal ordinance when they introduced the Natal Private Township and Town-Planning Ordinance (10 of 1934) and the Cape Townships Ordinance (33 of 1934) respectively (Price and Cameron, 1981: 78).

All three ordinances introduced town planning schemes with similar objectives borrowed partly from the English Acts and partly from the United States of America's zoning enactments (Price and Cameron, 1981: 78-79). These objectives did not develop progressively from the constitution or common law in South Africa and therefore had little force (as in the case of United States of America where it was developed from American zoning enabling Acts) (Price and Cameron, 1981: 8).

Zoning as a mechanism with its origins from the United States of America was intended to protect by defining those uses that are prohibited rather than a forward thinking instrument to lay down the pattern of the future (Price and Cameron, 1981: 79).

Zoning had two functions. The first was to preserve the *status quo*, to achieve the objectives of the town planning scheme and promote stability by directing growth. The second function was to allocate development rights, sometimes leading to imprecision and misguidance according to Dewar (as sighted in Price and Cameron, 1981: 34) because it is not possible to determine the optimum use for a site either for the present or the future.

The Townships Boards (of which one was introduced in each province) exercised the main control over schemes and specified the form in which they must be prepared. They acted as arbiters between objectors to the scheme and the local authority, decide on appeals lodged against a local authority's scheme and acted as an advisory body to the Administrator. They were the key to the whole planning control set up in South Africa and were very successful as has been proved in the Transvaal or not so successful as in the Cape Province (Floyd, 1960: 45).

In some respects it is fortunate that town planning has been made a provincial matter, and not one for the national government. It has left the initiative in the hands of local authorities and has placed control where it is in close touch with such authorities. Town planning in South Africa has therefore arisen as a major administrative matter based on the control of the subdivision of land and the control of use for purposes of health, amenity, convenience and economy (Floyd, 1960: 111).

In 1986 the Land Use Planning Ordinance 15 of 1985 of the Cape Province replaced the old Townships Ordinance (33 of 1934) because it had become cumbersome and outdated. Due to priority change, the new Land Use Planning Ordinance focussed on forward planning as the most important element, followed by zoning control and subdivision. The old Ordinance has also become illogical owing to frequent and extensive amendments (Theunissen, 1987: 1).

According to Claassen (1987: 1) the Ordinance produced a diversion from the established town planning procedures in South Africa. The Ordinance created an “open-ended” system, leaving leeway for the introduction of new methods of planning.

The main contributions of the Ordinance according to Theunissen was forward planning or long-term planning, embodied in structure plans, land use control through zoning schemes and the concept that unutilised zoning should laps instead of being perpetual. The Ordinance also provides more opportunities and facilities for environmental management and for conservation of the natural environment than its predecessor (Claassen, 2001a: 11).

The Ordinance prescribes a three tier planning process, a statutory structure plan (the vehicle for broad planning), followed by a second structure plan which deals with more precise issues, and finally a more detailed and finite plan called the development plan (Mercer, 1987: 19).

It must be noted that a development plan in the British Town and Country Planning Act of 1986, consists of structure plans and local plans. In the Ordinance, section 5 (1) a development plan is part of the structure plan. Mercer (1987: 20) argues that a local plan in British term is synonymous with the South African term development plan.

A shortcoming of the Ordinance is the attempt to introduce development planning and “development plans” as stated in section 5 (1), but without clearly defining the term, leading to failure.

The partial failure of the Ordinance is not so much because of its shortcomings, but lays with the implementation (Claassen, 2001a: 11). The Ordinance was implemented during apartheid, and consequently created negative perceptions. Conservation orientated-people felt left out

because the Department of Nature Conservation and the National Department of Environmental Affairs did not have a final say in decisions.

2.4.1 Central government's influence through initiatives and legislation

Provincial legislation was not only influenced by developments in England and United States of America, but also from central government. From time to time central government conducted commissions and inquiries into planning related matters as well as introducing national legislation that had an influence on provincial planning.

By 1942 it was suggested that social issues must become as much an object of state policy as economic issues. In line with concurrent developments in Britain, the appointment of the Social and Economic Planning Council (SEPC) under chairmanship of Dr H. J. van Eck in 1942 confirmed the shift towards a new role of the state (Wilkinson, 1996: 148-149).

The Planning Council's Fifth Report on Regional and Town Planning produced in 1944 had a historical significance according to Wilkinson (1996: 150) because it represented the first scientific (modernist) approach to the technique of town and regional planning.

The Council's key recommendation was for the establishing an 'Department of Physical Planning and Regional Development' with specific social objectives to be achieved. Wilkinson (1996: 165) argues that Britain and the United States of America influenced the recommendations. It was influenced by the precedents set by the British Government's indicating the need for a national policy. The United States of America's regional development programmes, especially the Tennessee Valley Authority (TVA) indicated the effectiveness of a single agency.

The response to the report was mostly hostile due to the threat it posed to administrative autonomy devolved onto the provinces under the Constitution of 1910, and the reluctance of the government to disturb the constitutional status quo (Wilkinson, 1996: 174).

A 'fresh start' for spatial planning in South Africa through the recommendations of the Fifth Report was stopped when the consultative Committee resolved to postpone any further considerations of the report. An affirmation of conserving both land and other resources is a shocking in the light of the global environment crisis faced currently.

The Venter Commission's Third Report of the Inquiry into Township Establishment and Related Matters, issued in 1984 promoted long-term planning as a primary objective in the quest to expedite township establishment.

The main recommendations were to provide an integrated framework for development planning at all levels. This included a hierarchy of plans that should be interrelated and complementary (Venter Commission, 1984: 3).

2.4.2 National legislation

The most important national legislation that had implications for provincial planning can be summarised in Table 2.2.

TABLE 2.2
NATIONAL LEGISLATION

YEAR	NATIONAL LEGISLATION	IMPLICATION
1967	Physical Planning Act (88 of 1967)	Repealed by act (125 of 1991)
1970	Environmental Protection Act	Repealed by act (73 of 1989)
1989	Environmental Conservation Act (73 of 1989)	The minister of Environmental Affairs have the power to intervene in the planning and development process, and introduced a system of integrated environmental management (IEM) Later repealed by act (107 of 1998)
1991	Physical Planning Act (125 of 1991)	To promote orderly physical development by preparing national and regional development plans and regional and urban structure plans.

2.5 CONCLUSION

Town planning in South Africa did not develop in isolation, but was influenced by international trend especially from England and the United States of America. South Africa followed the English model up to about 1940 and then started moving towards the American model.

The main contributions of United States of America's planning system is the way in which comprehensive plans addresses the total social-economic-physical development field. Planning is not limited to physical planning but also focus on socio-economic development. This makes planning more pro-active in that planning leads development. The short term focus of planning by annually revising development strategies makes it possible to address problems on shorter notice and more effectively (Claassen, 2000a: 5).

When the Land Use Planning Ordinance was of the Cape (15 of 1985) was adopted, planning in South Africa started moving again closer to the English model. A focus on pro-active planning rather than just reactive zoning schemes is an indication of this movement (Claassen, 2000a: 4).

CHAPTER 3

PLANNING THEORY

3.1 INTRODUCTION

Planning theory is an elusive subject of study according to Campbell and Fainstein (1996: 1). It does not however mean that it is not important to try and define planning theory, understand the underlying assumptions that theory provides for informing practice. Through the “lenses” of planning theory it is easier to identify problems from the present and past and it helps to define the field of planning and drives it forward.

3.2 DEFINING PLANNING THEORY

Campbell and Fainstein (1996: 2-3) identified four reasons for the difficulty in defining planning theory. Planning theory overlap with theory in all the social science discipline and it becomes hard to limit the scope, the boundary between planners and related professions is not mutually exclusive meaning that planners do not just plan, and non planners plan. The field of planning is divided by those who define it by its objects and those who do it by its method, and planning often borrows diverse methodologies from many different fields.

Authors for example P. Healey, L. Sandercock, V. Watson, J. Innes and P. Harrison have tried through a multiplicity of methods to classify the different planning theories. It is not necessary for an in-depth discussion and the shifts in planning theory is presented in figure 3.1.

The most important movements constituting the framework in which planning theory is shaped are modernism and post-modernism. A link can be easily made with the historical development of planning and can also be useful in understanding current trends in planning legislation. A discussion on modernism and post-modernism will follow.

TABLE 3.1
OVERVIEW OF SHIFTS IN PLANNING THEORY

MODERNIST	1880's	Urban design approach in physical/ land-use planning				From planning as design to science
	Post WW II	<i>Economic Development planning (First Soviet 5 year economic plan in 1929)</i>				
		Blue print approach in physical/ land-use planning, as well as economic planning (“Traditional master plans”)				
	1960's	Rational scientific planning and systems approach in physical/ land-use planning				
		<i>Environmental planning (EIA's became mandatory 1971 in USA)</i>				
POST-MODERNIST	1970's	Practical critique:	Practical critique:	Liberal/ democratic critique:	Radical critique	From planning as technical expert to communicator
		Incrementalism and mixed scanning	Planning implementation	Participative planning		
	1980's and further			Practice movement	Communicative planning/ communicative action	
					Power and /or rationality	
		<i>Integrated Development Planning (IDP's)</i>				
		<i>Integrated Urban Management/ Governance</i>				

Adapted from Anneke Muller (from unpublished classification scheme of Vanessa Watson, 2001)

3.3 MODERNISM

The Industrial Revolution and the rise of capitalism were associated with a changing world-view termed the "enlightenment". Modernism flows from the enlightenment and the central organising theme is the idea of inevitable human progress, forming a broad paradigm of thinking and action.

Modernism replaced the traditional order with bureaucratic rationality, capitalist economic relations and introduced themes such as the superiority of scientific method and knowledge, technological mastery over nature (Featherstone as sighted in Harrison, 1996: 26).

Modernism is committed to value-free objectivity and is concerned with the uncovering of universal/objective truths and scientific laws (Harrison, 1996: 26).

Modernism together with socialism (growing strongly in the first half of the 20th century) led to a blueprint, technocratic top-down approach to planning (Claassen, 2001a: 6). Planning as a discipline in South Africa was born in the modernist timeframe. Blueprint and process planning formed the basis for the planning process to follow, and is extensively discussed by Faludi (1973).

Blueprint planning encompasses the physical production of plans and the goal-orientated execution of the goal entailed in it. In-dept planning is done before any implementation occurs. In blueprint planning there was certainty concerning the outcome (Faludi, 1973: 131). The certainty of outcome is founded within the framework of rational comprehensive planning. In this process all aspects are identified, taken into account and evaluated against all goals.

Rational planning has discreet steps – goals setting, alternative generation, evaluation and decision. Planners, citizens and elected officials had distinct roles at specific points in the process (Innes, 1998: vii).

Town planning schemes, zoning schemes and structure plans were the result of the modernistic approach to planning. Weaknesses are a lack of public participation, the lack of identifying alternatives to a problem and the general inflexibility of mechanisms.

Outcomes of planning initiatives showed that it was not possible to determine human action, nor its consequences, on the environment with accuracy. Another problem identified is that spatial development through planning did not always lead to socio-economic development (Claassen, 2001a: 6). Simply stated modernism did not achieve the desired development or conservation.

Modernism gave way to post-modernism. Blueprint planning was replaced by process planning, technocratic systems for political decision taking and a top down approach made way for a bottom-up approach.

3.4 POST-MODERNISM

Post-modernism is presented as a challenge to modernism and is often explained as the antithesis of modernism. It places emphasis on human consciousness, symbolic meaning, the importance of language, local differences, cultural and gender diversity (Harrison, 1996: 26). According to Innes (1995 as sighted in Khakee, 1998: 361) post-modern planning falls within the communicative paradigm.

Post-modernism view modernistic universal truths as being gross and often misleading oversimplifications that manifests as scientific explanations, but serve only to legitimise the interests of certain groups at the expense of others. Instead of searching for the universal (the idea of grand theory and reason) post-modernism focus on the specificity's of place and history, and subsequently the reawakening of interest in regional and locality studies (Harrison, 1996: 27).

The implications of post-modernism for planning according to Harrison (1996: 28) is the focus on aspects such as decentralisation, deregulation, local context, social diversity and mixed use of land.

Positive aspects of post-modern planning are the facilitation of public participation in the decision-making process as well as the acceptance of responsibility for the environment – built and natural. The negative consequence was the extended public participation process, often resulting in a costly time consuming process, postponing the decision-making process (Claassen, 2001a: 10).

Claassen (2001a: 11) argues that post-modernism is largely reactive in the way that every proposal is debated at length and there is little certainty of the outcome.

3.4.1 Radical Democracy and Environmentalism the 'Green Movement'

By the late sixties a range of voices and movements began to criticise what they saw as anti-democratic, and for some even anti-humanist tendencies of planning institutions. Emancipatory forces within planning were encouraged by a broader international shift from

representative to participatory democracy. In short, the rise of the reflexive popular consciousness (Baily 1975 as sighted in Gleeson, 2000: 127).

Publications include Jane Jacob's (1961) intervention against modernist planning, and later anticipated the critiques of planning by pluralists, feminists, post-modernists and neo-liberals.

Various social movements, including environmentalism arose in opposition to technocratic planning, alleging that planning was darkening rather than enlightening modern society by oppressing and sidelining a range of human and ecological values (Sandercock, 1998 as sighted in Gleeson, 2000: 128).

Publications such as Ian McHarg's *Design with Nature* (1969) and the Club of Rome's *The limits to growth* (Meadows et al 1972) highlighted the fragility of nature and the importance of considering the impact of human activity on the natural environment (Claassen, 2001a: 10).

Environmental and radical democratic critiques have both sought to expand the domain of planning. It is done in two ways, by extending its political reach and by enlarging its conceptual outlook. Both in different ways attempted to resolve two central crises in planning – the one of socio political legitimacy and ecological sustainability (Gleeson, 2000: 128).

3.4.2 Neo-modernism

In South Africa concerns for the natural environment grew slowly. In 1983 there was a joint initiative from the South African Institute of Town and Regional Planners together with several other professions promoting environmental impact assessment as a planning tool (Claassen, 2001a: 11).

Conservationists based their values on bio-centric ethics. They view the post-modernistic planning system as inadequate in preserving/protecting the natural environment. They argue that too much emphasis is placed on people orientation and human rights, and not what is necessary for saving natural resources. This 'eco-socialism' forms the cornerstone of the movement towards neo-modernism (Claassen, 2001a: 11).

Neo-modernism is moving back towards a technocratic approach by assuming that consequences of actions can be accurately and scientifically determined through impact assessments. It also assumes that objective decisions can be taken free from personal

prejudice and interest. Sections 21 and 26 regulation of the Environmental Conservation Act is an example of this tendency.

3.4.3 Movement towards proactive management

Towards the end of the modernistic era (in the early seventies) it became clear that planning did not necessarily lead to development. Modernism was only proactive in producing plans that could lead to development, but in practice had mixed results because of its top-down nature. Khakee (1998:1) already realised in the early 1970's that planning systems of the time did not lead to implementation. Implementation does not only include the promotion, but should also include the actual realisation of development.

3.5 CONCLUSION

Planning theory has been influenced by modernism and later by post-modernism. The assumption of the modernistic era of accurately and objectively predicting effects of action is doubtful because of a large degree of subjectivity and personal interest in planning. The recognition of failure in planning efforts during the modernistic era made way for a post-modern approach to planning. A post-modern approach is however not the panacea to planning problems as a tendency toward neo-modernism (especially by the conservationists) can be traced.

Innes (1998: viii) concludes that the important part of planning is not just deciding what must be done for twenty years into the future but to be adaptive and creative as the future unfolds. It is also about being prepared to shape the future in ways we cannot anticipate now. Process matters and citizens and all other players have real knowledge and through participation they are central to the successful planning.

CHAPTER 4

CONTEXTUALISING PROVINCIAL PLANNING

4.1 INTRODUCTION

A democratic South Africa was faced in 1994 with the legacy of a strong control orientated planning system. The system included a hierarchy of plans, from national to local plans accompanied by voluminous rules and regulations, which left little space for local discretion (Xaba and Pohl, 2000: 10).

A wide range of changes was ushered in from 1994 on national level with specific legal and policy contexts. The Constitution prescribes the competencies of the provincial sphere as well as the relationship between spheres. In this chapter the influence of central government policy and legislation on provincial planning will be discussed.

4.2 A NEW PLANNING APPROACH

A strong control orientated planning system, a lack of public participation and a need to facilitate development especially in former Black areas highlighted the need for a new policy framework, guided by a new planning approach (Xaba and Pohl, 2000: 11-12). Taking into account these problems and the transitional institutional environment in which planning has to take place it was decided that a normative planning approach would be the most suitable and relevant in South Africa. The normative approach is translated into a system based on norms and standards that are introduced through a broad set of national principles and policies. These principles and policies will constitute a new policy framework for planning. The normative-based system is according to Xaba and Pohl (2000: 10) suitable when taking into consideration the following factors.

The normative-based system would move from a prescriptive control-orientated system to creating space for creativity and discretion on a more local level. Principles are written into legislation on a national level leaving space for provincial law to expand on it, making it more province-specific. These principles are then translated into local plans (spatial plans or integrated development plans).

The normative approach is not a simple solution to a complex problem: it has some negative implications. According to Claassen (2001a: 8) norms seem better than regulations but on closer scrutiny normative legislation seems to be one-sided, even contradictory. Normative legislation is by nature not proactive, as norms can be interpreted in many different ways. This may leave the developer uncertain as to what will be acceptable.

There is also an abundance of different sets of statutorily enforceable norms for example Development Facilitation Act Section 3, Chapter 2 of the Constitution and Section 2 of the National Environmental Management Act. This leads to confusion and even contradictions with different government departments drafting different sets of norms.

Despite the negative connotations, norms rather than regulations try to achieve a balance between two extremes, identified by Rose (1979: 1) on the one side absolute certainty (many regulations) and on the other side absolute freedom (no regulations).

4.3 THE LEGAL CONTEXT

The legislation introduced on national level since 1994 that influence provincial planning is identified in Table 4.1. The Constitution (108 of 1996) will be discussed first because it forms the cornerstone of a sovereign and democratic South Africa and is the supreme law of the Republic (section 1(2)).

TABLE 4.1
LEGAL CONTEXT

YEAR	LEGISLATION	DEPARTMENT
1995	Development Facilitation Act (67 of 1995)	Department of Land Affairs and Agriculture
1996	Constitution of the Republic of South Africa (108 of 1996)	Constitutional Assembly
1998	National Environmental Management Act (107 of 1998)	Department of Environmental Affairs and Tourism
1998	Local Government: Municipal Structures Act (117 of 1998)	Department of Provincial and Local Government
2000	Local Government: Municipal System Act (32 of 2000)	Department of Provincial and Local Government

4.3.1 The Constitution (108 of 1996)

New constitutional requirement such as cooperative governance, procedural and participatory rights were introduced to ensure accountability from decision-making institutions and bodies (Chapter 3). The Bill of Rights (Chapter 2) promoting social and economic rights of citizens and the protection of the environment have profound effects on planning and related activities.

The Constitution redefines the relationships within government by replacing the system of a vertical hierarchy of tiers, with three overlapping spheres each distinctive, interdependent and interrelated. The use of spheres implies more flexibility and equity according to Xaba and Pohl (2000: 11).

The Constitution allocates certain functional areas to each sphere of government whereby a sphere cannot assume any power or function except those conferred to it in terms of the Constitution. According the Xaba and Pohl (2000: 12) a normatively based planning system fits well within the constitutional context by allowing different spheres to play their appropriate roles, yet minimising potential conflict between the spheres.

Although the Constitution does not use the word ‘spatial planning’ it is regarded according to Xaba and Pohl (2000: 11) as being part of the functional areas of ‘regional planning and development’ and ‘urban and rural development’. These functional areas are of concurrent

national and provincial legislative competence, meaning both national and provincial spheres can enact legislation for these functional areas.

Provincial planning is a functional area of exclusive provincial legislative competence as set out in Part A of Schedule 5. National parliament may not pass provincial planning laws unless the purpose of the legislation is to maintain national security and other criteria as set out in Section 44 (2) of the Constitution.

Part A of Schedule 4 dealing with municipal planning lists aspects of concurrent legislative competence, meaning that either national or provincial laws can deal with municipal planning and land development management (Green Paper on Planning and Development, 1999: 20).

Where both national legislation and provincial law exist concurrently and conflict occurs, the general rule is that provincial law shall prevail. The exception is when circumstances occur as set out in Section 146 in which national law shall prevail, but it seems as if these conditions will have little influence on planning because it deals with issues like national security and the maintenance of economic unity.

4.3.2 The Development Facilitation Act (67 of 1995)

The first application of the normative-based system of planning was introduced by the Development Facilitation Act (DFA) in 1995. The law introduced substantive principles and norms that must guide all land development and decision-making.

The principles (Chapter 1) intend to bring radical changes through the rejection of low density, sprawling, fragmented and largely mono-functional forms of development in urban and rural areas. It promotes compact, integrated and mixed-use settlement form resulting in a harmonious relationship between settlements and the natural environment. It also places emphasis on environmental sustainability, promotion of security of tenure, the use of land development to promote human development, maximum use of public participation and conflict resolution.

The Act was promulgated as an interim measure to bridge the gap between old apartheid era planning laws and a new planning system for a democratic South Africa.

The Development Facilitation Act attempts to bring about uniformity in township establishment, land registration and the planning system in general. There is a special focus on speedy low-income development. Although it does not repeal any existing legislation in urban areas, it allows the developer a choice between using the relevant provincial Ordinances, Less Formal Township Establishment Act or the Act itself when applying for land development (Emdon, 1994: 90).

The key features of the Development Facilitation Act are:

- General principles for land development attempt to impose a broad policy direction by stating that all decisions taken by any sphere of government involving the use and development of land should take into account these principles (Chapter 1);
- Land Development Objectives (LDO's) must be prepared and should bind all land development decisions taken by a municipality or any other authority within the municipality's area of jurisdiction (Chapter 4);
- A Development Tribunal must be established in each province to help in providing a speedy route for the consideration of land use change and land development applications. The tribunals have exceptionally strong powers to ensure that any obstruction to sustainable and equitable development is eradicated (Chapter 3).

In this new approach spatial planning is defined as a public sector activity and therefore public agencies must commit themselves in giving strong direction. It also requires the production of plans that translate national principles into context-specific proposals. The process must be based on public participation and political buy-in. It also makes provision for rapid decision-making especially projects affecting historically disadvantaged communities.

Problems identified by Claassen (2001a: 12) are that the Act to a large degree cuts local governments out of the decision-making process. It also leaves the decision to applicants whether submission for an application is made through the Act or the planning ordinances. The duplication of human resources is evident.

The Act as an interim measure left the impression of "hold back until further notice" with most government officials. Mr H Terreblanche (personal communication, June 22, 2001), Director of the Free State Provincial Department for Housing and Local Government, concluded that the province will only actively start on drafting new provincial legislation once

the Department of Land Affairs makes their intention clear on the future role of planning in South Africa (in the form of an Act replacing the DFA).

The compulsory drafting of land development objectives (LDO's) created many problems in local government and it is not surprising that it was later dropped from policy documents for example the Green and White Papers on Development and Planning as well as by the Land Use Bill.

4.3.3 National Environmental Management Act (107 of 1998)

The Department of Environmental Affairs and Tourism introduced the National Environmental Management Act in 1998 in an attempt to provide for co-operative environmental governance by establishing principles for decision-making, institutions and procedures for co-ordinating environmental functions and procedures.

According to Claassen (2001a: 14) the strengths of this Act are not so much the systems that it creates, but rather on the principles and processes that it prescribes. The principles (Chapter 1) are normatively based in providing guidelines based on environmental management being:

- anthropocentric – placing people and their needs at the forefront of its concern;
- sustainable development in terms of social, economic and environmental aspects and
- integrated environmental management taking into account all aspects of the environment and all people in the environment.

These normative principles bind all organs of state and has the implications that provinces should take it into account when they adopt planning legislation.

Chapter 5 deals with integrated environmental management and sets out the legal mechanisms for environmental impact assessments introduced in the sections 21 and 26 regulations of the Environmental Conservation Act. These regulations are applicable to virtually all new developments where there is a potential impact on the environment, socio-economic conditions and the cultural heritage (section 24(1)(a)(c)).

Section 24(2) makes provision for provinces to take over the functions of section 21 and 26 regulations. This is a deliberate attempt from national level to integrate environmental management, and gives the provinces an opportunity to be part of the integration.

Claassen (2001b: 15) notes that the promotion of integration could have been enhanced by linking the Chapter 1 principles, with the general principles for development in section 3 of the Development Facilitation Act (67 of 1995). This would have formed a strategic link between socio-economic development and conservation of the natural environment.

4.3.4 Local Government: Municipal Structures Act (117 of 1998)

This Municipal Structures Act (117 of 1998) provides for the establishment of municipalities in accordance with the requirements relating to categories and types of municipalities. The Member of the Executive Council for local government on provincial level together with the Demarcation Board (as established by section 2 of the Demarcation Act (27 of 1998)) will determine the type of municipalities as well as the boundaries of the new municipalities.

The new categories for municipalities (Chapter 1) can be identified as:

- Category A municipalities – metropolitan municipality,
- Category B municipalities – local municipality,
- Category c municipalities – district municipality.

The relevance of this Act to province planning matters is that province is involved with the categorising and demarcation of boundaries of new municipalities. The old district councils is eradicated and included in new boundaries of the different municipalities in the jurisdiction of the province.

4.3.5 Local Government: Municipal Systems Act (32 of 2000)

The Municipal Systems Act (32 of 2000) provide for the principles, mechanisms and processes to enable municipalities to perform their duties as set out in the Constitution (108 of 1996), Chapter 7. The Act establishes a simple and enabling framework for core processes of planning. The Act provides for other spheres of government (provincial and national) to progressively build local government by establishing a framework for support, monitoring and standard setting as set out in Chapter 10.

Central to the processes of planning and developmental local government is integrated development planning as described in Chapter 5. It is compulsory for every municipality to commit itself to be developmentally orientated, co-operate with other spheres of government and adopt an integrated development plan.

Parts 2 and 3 of Chapter 5 prescribe the content and process for planning, drafting, adopting and reviewing of integrated development plans. Section 31 gives province the power to monitor, facilitate and support municipalities in the process of producing integrated development plans.

Chapter 10 focuses on the role of provinces in monitoring and setting of standards for municipalities. Section 155(6) states that the MEC for local government in each province must establish mechanisms, processes and procedures to monitor and assess the support needed by municipalities in the management of their own affairs, performing their functions and developing their capacity.

The Act specifies that the spatial framework contained in an integrated development plan must include the provision for basic guidelines for a land use management system. In practice the spatial frameworks are of such a broad and general nature that they provide very little useful guidance for land use management (Oranje et al. 2000: 33).

4.3.6 Sectoral laws

Laws enacted such as the Housing Act and the Water Act all have powerful implication for planning in the form of procedural obligations.

4.4 THE POLICY CONTEXT

Since 1994 a number of policy initiatives were introduced, driven by various government departments. The policies with potential influences on development and planning on provincial level will be briefly discussed. These policies are presented in Table 4.2.

TABLE 4.2
POLICY CONTEXT

YEAR	POLICY	DEPARTMENT
March 1998	White Paper on Local Government	Department of Provincial Affairs and Constitutional Development (now Department of Provincial and Local Government)
May 1999	Green Paper on Development and Planning	National Development and Planning Commission for Department of Land Affairs
March 2000	White Paper on Development and Planning	Department of Land Affairs
July 2001	Land Use Bill (to become by the Land Use Management Act)	Department of Land Affairs

4.4.1 White Paper on Local Government

The White Paper on Local Government introduced the concept of “developmental local government” whereby local government should be committed to the process of public participation in finding sustainable ways to meet social, economic and material needs and improve the quality of their lives (White Paper on Local Government, 1998: 17).

The Local Government Transition Act (209 of 1993) created the concept of integrated development plans (IDP's) that had to be formulated by local government. The White Paper further this concept by including budget cycles and performance management.

Provincial government's role toward local government (White Paper, 1998: 41-46) includes a strategic, development, intergovernmental, regulatory, capacity building, fiscal, monitoring and intervention role. This policy document resulted in the Local Government Municipal Structures and Systems Acts (117 of 1998 and 32 of 2000) respectively.

4.4.2 Green Paper on Development and Planning

The National Development and Planning Commission (DPC) appointed in terms of the Development Facilitation Act (67 of 1995) was requested to produce a draft Green Paper on Development and Planning for the Department of Land Affairs.

The Green Paper contains a set of proposals on how the planning system in the country could be changed (DFA Update, 1999:6). It focuses on the spatial planning system, particularly the roles of different planning agencies and the relationship between them. The main problems identified (Green Paper, 1999: 30) can be summarised as:

- a lack of a strong relatively standardised planning system,
- a lack of inter-governmental co-ordination,
- a complex legislative and procedural framework,
- a lack of capacity among officials and decision-makers and
- a lack of a single route for land-related applications especially for low-income development.

The Green Paper (1999: 31-39) proposes terminology standardisation, a rewording, reordering and expansion of the Development Facilitation Act's principles. To address the problem of co-operative governance and planning it proposes that a departmental home must be created for spatial planning and identified the Department of Land Affairs as the most appropriate "home".

To clarify the roles between the different spheres of government it is suggested that provincial functions (Green Paper, 1999: 46-48) should be:

- co-ordinating line function activities through appointing a core spatial planning team in each province,
- co-ordinating sectoral national priorities with their own plans and that of local government and participate in the national planning co-ordination forum,
- drafting a single piece of legislation to cover all planning functions,
- translating national norms and standards into provincial specific forms in law and
- support and co-ordinate local government action and undertake regional planning.

Land development defined as "any procedure aimed at changing the use of land for the purpose of using the land for residential, industrial, business, small-scale farming, community of similar purposes"(the Development Facilitation Act's (67 of 1995) definition) also includes land use change.

The Green Paper (1999: 62) suggests that a system of land development management be introduced in South Africa. National government should be limited and focused by establishing norms and standards (a national framework), leaving the “nuts and bolts” of land development management to provincial government. Provinces should introduce legislation to accommodate the different needs of each province.

4.4.3 White Paper on Development and Planning

After a process of public participation and receiving public comments on the Green Paper on Development and Planning the White Paper on Planning and Development was issued in March 2000 by the Department of Land Affairs.

The new system for spatial planning and land use management (White Paper, 2000: 3-4) includes the essential elements of:

- principles and norms – sustainability, equality, efficiency, fairness and good governance – guiding all decisions relating to spatial planning and land use management,
- land use regulators, mainly performed by municipalities, but also include the establishing of a provincial land use tribunal and appeal tribunal that will act in specified situations as land use regulators,
- a compulsory spatial development framework (as required by the Municipal Systems Act (32 of 2000)) operating as an indicative plan and linked to a land use management scheme that will record all land uses and development permissions,
- a uniform set of procedures for land development approvals to replace the different procedures by different provinces and
- national spatial planning frameworks that will serve as a policy framework to ensure sustainable and equitable spatial planning throughout South Africa.

The White Paper (2000: 25-26) also addresses the problem of duplication and overlapping between procedures for land use change or land development approval in terms of planning legislation, and those required in terms of the environmental impact assessment (EIA) provisions of the Environment Conservation Act (21 and 26 regulations).

It is suggested that the function be located in one sphere of government – local government – and with one institution – a committee to deal with environmental impact assessment and land

use decisions, established by the local government. A single appeal tribunal on provincial level should be established to deal with appeals and matters with impact beyond municipal boundaries.

The implication is that province will lose their power as the only institution authorised to decide on environmental impact assessments. The provincial role in spatial planning, land use management and land development will be limited to giving support, guidance and helping to build capacity on local government level.

Provincial government will be responsible for establishing and managing of land use tribunals and appeal tribunals. Unlike the Development Facilitation Act (67 of 1995) where an applicant can choose between the municipality and the provincial development tribunal to lodge an application with, the applicant can now only under certain conditions apply at the land use tribunal (White Paper, 2000:31).

4.4.4 Land Use Bill

The Land Use Bill is the direct product of the Green and White Papers on Development and Planning and was issued by the Department of Land Affairs in July 2001.

The Directive Principles in Chapter 2 will guide all national and provincial legislation as well as municipal by-law relating to spatial planning, land use management and land use development. These principles states that all spatial planning, land use management and land use development should be sustainable, equal, efficient, integrated and based on fair and good governance (section 4-5). Matters dealing with municipalities in terms of the Bill are summarised in Table 4.3.

TABLE 4.3
LOCAL GOVERNMENT

CHAPTER/SECTION	INSTITUTION/PREPARATION	FUNCTION
Chapter 3 (as prescribed in terms of section 26 of Municipal Systems Act (32 of 2000))	development frameworks	consistent with directive principles and any national land use frameworks
Chapter 4	land use schemes (within 5 years of enactment of this Act)	supersede all town planning schemes and must determine purpose of use of every piece of land and conditions applicable for every use
Chapter 5 Section 35 (in line with section 24 of NEMA (107 of 1998))	land use regulations environmental impact assessment (EIA)	approval needed before any change in land use is permitted EIA done before approval
Section 39	land use advisory committee	process, advise and make recommendations to council before application is decided on

The Minister of Land Affairs is given extensive powers in terms of this Act. In Chapter 3 the Minister is given the power to introduce (when necessary) national land use frameworks to give effect to national land use policies. Section 32 gives the Minister the power to intervene in the process of land use application if it is in his/her opinion that it prejudicially affects national interest. Section 90 also gives the Minister a monitoring function over the implementation of the directive principles, progress of municipalities in adopting land use schemes and capacity of municipalities to implement the Act. Section 94 gives him/her the power to make any regulations concerning any matter in the Act. Matters in the Bill dealing with province are summarised in Table 4.4

TABLE 4.4
PROVINCIAL GOVERNMENT

CAPTER/SECTION	INSTITUTION/PREPARATION	FUNCTION
Chapter 7	land use tribunals may co-op technical advisors	consider applications referred to by municipality, the Minister or if the application's boundaries are beyond municipal boundaries be present and to speak at meetings
Chapter 8	land use appeal tribunal	consider and decide all land use applications of which an appeal has been lodge
Section 91 an 92	provincial monitoring and supervision and capacity building	assist municipalities in preparation of spatial development frameworks, resolve disputes

The most important implication for provincial planning systems is that this Act will repeal (section 97), the Development Facilitation Act (67 of 1995), the Physical Planning Act (125 of 1991), Less Formal Township Establishment Act and the Removal of Restrictions Act (84 of 1967). This is the first attempt to regulate spatial planning throughout South Africa into one system.

Although the Bill is still in a phase of public comment there are problems identified (South African Planning Institution, 2001: 1-3). Good ideas from the White Paper for example the need to streamline and speeding up of the decision-making process and the “facilitating” of desired development through inducement rather than “controlling” development is not included in the Bill.

Normative legislation in the form of the proposed directive principles would only make the legislative environment more complex if the focus of the Act is not clearly determined as there is already principles in the DFA, municipal by-laws and even the national Building Regulations. The quality of environment is not addressed in the principles.

The most important issue that is not addressed is that of adequate resources for effective implementation. Inquiries need to be made into available resources before implementing the Act, because the property economy is highly dependent on the smooth processing of applications.

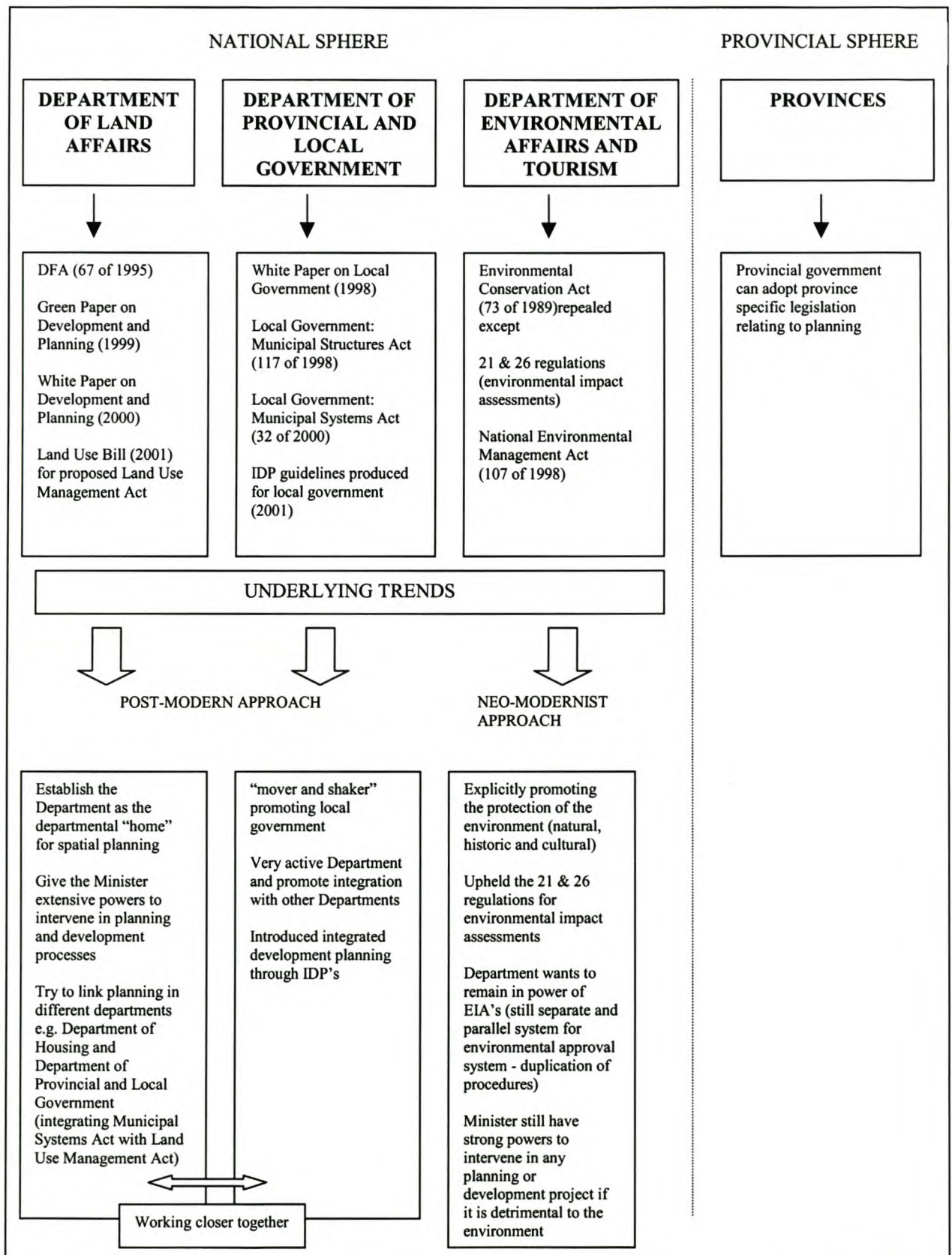
The incorporation of environmental improvement of any land use change or development as described in the National Environmental Management Act (107 of 1998) is not incorporated in the Bill and the system remains unaltered and in place (South African Planning Institution, 2001: 2). This problem needs serious consideration because it is the main aim of the Bill to move to a uniform system of spatial planning.

Long-term planning is not addressed through the five year planning cycle as proposed in the spatial development frameworks and need to be incorporated.

4.5 CONCLUSION

Since 1994 the legal and policy context concerned with planning have changed dramatically. The most important change is that a normative approach to planning has been adopted by national government. By introducing a new government system consisting of three inter-dependant and interrelated spheres this have considerable implications for the provincial sphere. Through the analysis of the legal and policy context it is identified that different departments are involved with planning, each with its own agenda and objectives. These trends are illustrated in figure 4.1.

FIGURE 4.1
DEPARTMENTS INVOLVEMENT WITH PLANNING



CHAPTER 5

PROVINCIAL PLANNING SYSTEMS

5.1 INTRODUCTION

Provinces were given the opportunity to pass legislation relating to planning within the legal and policy context as described in Chapter 4. Since the Development Facilitation Act (67 of 1995) was introduced many provinces started reformulating planning law to create legal uniformity and to redress the legal and administrative chaos of apartheid. Within the normatively based paradigm of the Development Facilitation Act (DFA), KwaZulu-Natal was the first to adopt a provincial law on Planning and Development in 1998. The Western Cape, Northern Cape and Gauteng followed with the same initiative. In Table 5.1 shows the development of the provincial planning systems.

TABLE 5.1
PROVINCIAL PLANNING SYSTEMS

YEAR	PROVINCE
1998 July	KwaZulu-Natal Planning and Development Act (5 of 1998)
1999 April	Western Cape Planning and Development Act (7 of 1999)
2000 April	Northern Cape Act on Development and Planning (7 of 1998)
2000 November	Gauteng Planning and Development Bill (Final Draft)
2001 March	KwaZulu-Natal Planning and Development Bill (to replace Act 5 of 1998)

It will be the focus of this chapter to analyse the four provinces' mechanisms and institutions introduced by the different laws or proposed laws. The analysis will enable an evaluation of the effectiveness of the different planning systems.

5.2 PRINCIPLES

The Development Facilitation Act (67 of 1995) introduced general principles that apply to all land development and spatial planning in South Africa. The Development Facilitation Act (67 of 1995) give both national ministers and the provincial Premiers the power in section 3(3) to enable them to add to the principles in order to maximise their impact and make them more provincial specific.

5.2.1 Western Cape Planning and Development Act (7 of 1999)

Schedule 4 of the Western Cape Planning and Development Act (7 of 1999) contains the General Planning and Development Principles that underpin all procedures, institutions and processes relating to planning and development in the Province. Together with section 54 it constitutes the framework, norms and standards related to coordinated planning and development to promote integrated social and economic development.

Section 54 gives the provincial Minister the power to issue or amend policy on matters of provincial or regional interest relating to planning and development in the Province, and make provision for public participation in the process.

The seven principles (Schedule 4) addressing the relevant issues are:

1. Planning and development legislation, policy, administrative practice, regulations and by-laws
2. Decision-making and dispute resolution
3. Role player participation and human resources development
4. Development in general
5. Spatial environment restructuring
6. Sustainable development
7. Environmental protection

Principle 2 states that any proposed development should be judged on its merits and that no specific land use should be regarded in advance or in general as being less important or desirable than any other land use (taken directly from the Development Facilitation Act in section 3 (j)). It is made more provincial specific by specifying “ ... unless protection is

stated in a development framework or structure plan.” Principle 7 is dedicated to the protection of the natural and cultural environment and illustrates the priority of the Province to protect the environment.

5.2.2 Northern Cape Development and Planning Act (7 of 1998)

The General principles for land development in the Northern Cape Development and Planning Act that apply to planning and development in the Northern Cape is taken (copied) from section 3 of the Development Facilitation Act (67 of 1995) without any alterations.

The principles concerning decision-making and conflict resolution (section 3) are more simplified than the Development Facilitation Act’s principles and states that the General principles shall be upheld in any decision, that mediation should be considered before any dispute is referred to a decision-making body. The process should be open to the public, with written reasons for decisions available for public inspection.

5.2.3 Gauteng Planning and Development Bill (Final Draft 2000)

In the Gauteng Planning and Development Bill the principles must serve as a reference point for informing the preparation of all plans and planning decisions in line with a normative planning system. It represents the vision and development values in the planning processes and decision-making that is needed to promote and achieve an integrated, balanced, equitable and sustainable environment.

The principles are categorised as follows:

1. Promoting spatial restructuring and development
2. Promoting sustainable development
3. Development in general
4. Land use management systems
5. Enhancing planning and development in Gauteng
6. Promoting participative planning, participation and human resource development
7. Administrative fairness, decision-making and dispute resolution

The principles cover all the aspects of the Development Facilitation Act’s principles, it is only reworded and reorganised. The exception is the principles relating to the land use

management system (section 8), in which municipalities are compelled to introduce mechanisms for the implementation of land use and development aspects. They must provide legal protection of land use rights, and give the same protection in law to all landowners and occupiers to object, comment and participate in decisions affecting them. Municipalities should also encourage all applicants applying for land use change to identify potential impacts whether positive or negative.

5.2.4 KwaZulu-Natal Planning and Development Bill (Draft 2001)

KwaZulu-Natal was the first province to introduce a Planning and Development Act (5 of 1998) under the Development Facilitation Act (with a normative approach to planning). In 2001 a new Planning and Development Bill has been produced to repeal Act 5 of 1998. The main focus will be on the Bill (Draft 2001).

It must be noted that the General Principles in Chapter 1 and Schedule 1 of the Act is, according to the Green Paper on Development and Planning (1999: 34-35), the best example of provincial specific principles.

The seventeen principles primarily address the process of planning to be developmentally orientated, people-centred, interactive and pro-active in an integrated way. The principles also assign a limited role to provinces relative to local authorities. Provincial responsibility for planning and development should be limited to the formulation of policies, setting norms, standards and goals, coordinating regional and local processes and ensuring fair and open procedures. The provincial government should only execute planning and development functions where a local authority does not have the ability.

The environment receives special attention through the promotion of environmental ethics that enable sustainable use. Provision is made of procedures that will ensure that assessment of impacts on the environment of proposed policies and land uses are integrated in planning processes at an early stage.

In the KwaZulu-Natal Planning and Development Bill there is no special chapter or schedule containing general principles. The seventeen principles from Kwazulu-Natal Planning and Development Act (5 of 1998) are written in as part of the preamble in the Bill. In the preamble it only states that where it is desirable, the law should introduce appropriate

enforcement measures. In no section of the bill is reference made to the consideration of these 'principles' and it is not clear to what extent they are enforceable.

5.3 LONG-TERM PLANNING

The spatial planning system has two broad dimensions: a pro-active, (forward planning) long-term planning system and a decision-making land management system (control). Long-term planning can be seen as the pro-active part of the planning system. The principles discussed in section 5.3 should inform the pro-active system in an integrated and participatory way. The way in which the provinces provide for long-term planning will be discussed in the next section.

5.4.1 Western Cape Planning and Development Act (7 of 1999)

The Western Cape Planning and Development Act is very clear on the distinction between pro-active long-term planning and managing of land development through control. Chapter One introduces development frameworks as a means for promoting long-term planning. Table 5.2 shows which government sphere is responsible for the establishment of the different plans as well as showing the institutions that may be created to assist in the task.

The general purpose of an integrated development Framework (IDF) (section 5) is through development planning to lay down strategies, proposals and guidelines (including development objectives and implementation plans) to promote the general principles. The sectoral plan (as part of the IDF) consists of more detailed strategies, proposals and guidelines for a specific sector, element or subject. The spatial plan (as part of the IDF) will indicate the spatial implications of the IDF and will lay down strategies, proposals and guidelines for future spatial development.

TABLE 5.2
WESTERN CAPE LONG-TERM PLANNING

PROVINCIAL		LOCAL			
PROVINCE (Minister)		METROPOLITAN COUNCIL		LOCAL MUNICIPALITY	
<i>Must</i>	Integrated Development Framework (IDF)	<i>Must</i>	Integrated Development Framework (IDF)	<i>Must</i>	Integrated Development Framework (IDF)
		<i>Must</i>	spatial plan (former structure plans)	<i>Must</i>	spatial plan (former structure plans)
May	sectoral plans	May	sectoral plans	May	sectoral plans
reviewed at least every five years					
INSTITUTIONS					
May	establish a joint committee	May	two or more municipalities on agreement establish permanent or ad hoc committee	May	two or more municipalities on agreement establish permanent or ad hoc committee
May	establish technical advisory committee	May	establish technical advisory committee	May	establish technical advisory committee

5.3.2 Northern Cape Development and Planning Act (7 of 1998)

The Northern Cape Development and Planning Act provides for long-term planning in Chapter 4 through the introduction of three levels of plans. Table 5.2 illustrates the different plans to be prepared and implemented throughout the province.

The purpose of a Provincial Plan (section 14-15) is to ensure that the use and allocation of resources are informed by a set of integrated and coordinated policies, objectives, implementation strategies, programmes and projects. It is aimed at promoting the general principles, ensuring the supply of public infrastructure, sustainable utilisation of land as well as providing that investment and expenditure programmes are linked with budgetary cycles. The link with budgetary cycles will ensure that programmes and projects are prioritised and that monitoring and assessment of performance is effective. The Provincial Plan should also inform and guide District Plans and Land Development Plans.

TABLE 5.3
NORTHERN CAPE LONG-TERM PLANNING

PROVINCIAL Member of Executive Council (appointed by Premier)		REGIONAL District Council		LOCAL Local and Representative Council	
<i>Must</i>	prepare Provincial Development and Resource Management Plan (Provincial Plan) (or any prior plan with same purpose and content as prescribed in section 14 & 15)	<i>Must</i>	prepare District Council Settlement and Infrastructure Development and Management Plan (District Council Plan) (or any prior plan with same purpose and content as prescribed in section 21 & 22)	<i>Must</i>	prepare Local and Representative Council Land Development Plan (Land Development Plan) (or any prior plan with same purpose and content as prescribed in section 28 & 29)
	Reviewed annually prior to budgetary cycle		Reviewed annually prior to budgetary cycle		Reviewed annually prior to budgetary cycle
INSTITUTIONS					
None		None		None	

The purpose of the District Council Plan is to provide a spatial and infrastructural framework for the location, distribution and servicing of existing and proposed urban and rural settlements. The Plan must make provision for promoting the general principles, links with budgetary cycles and a basis for securing and leveraging financial resources from Provincial and National Government sources as well as private sector investment. Finally it informs and will be informed by the Land Development Plans.

The Land Development Plans will provide an integrated spatial and infrastructural development framework, informed by identified development needs and the budgetary capacity. This will guide decisions in regard to location, distribution and intensity of urban related activities. It will consist of a contextual framework (scope of area's socio- and economic conditions), a development framework (set of co-ordinated and integrated policies, objectives and strategies) and an implementation framework (prioritised programmes and projects for implementing policies, objectives and strategies).

The implementation framework can also include any other implementation mechanism including zoning schemes, land development procedures and regulations, urban renewal programmes and strategic site development.

Existing structure plan or equivalent spatial plan approved in terms of the Land Use Planning Ordinance (15 of 1985) approved prior to 27 April 1994 shall be withdrawn as well as areas defined in terms of the previous Group Areas Act for a particular race group. If it was approved after 27 April 1994 and was not defined previously in terms of the Group Areas Act for a particular race group, it shall remain in operation until a Land Development Plan is approved, or 18 months after the commencement of the Act, whichever comes first.

Section 34 clarifies the relationship between the Provincial Plan, the District Plan and the Land Development Plan and the Land Development Objectives (LDO's) as provided for in the Development Facilitation Act (67 of 1995). If these plans are consistent with the provisions of this Act, the plans shall be deemed to fulfil the requirements of section 28 and provide for the Land Development Objectives (LDO's) in section 29 of the Development Facilitation Act.

5.3.3 Gauteng Planning and Development Bill (Final Draft 2000)

The Gauteng Planning and Development Bill introduce three different plans that forms part of its forward planning (or long-term planning) strategy. Table 5.4 illustrates the level of government that must introduce the different plans.

The general purpose of the Gauteng integrated development framework is to provide a strategic framework and an implementation strategy to coordinate relevant policies, strategies and plans of the different provincial departments and municipalities. It should include a vision for the province, broad provincial goals and objectives, strategic focus areas, priority programmes and projects as well as targets for delivery. It makes provision for the consideration of the needs and priorities of municipalities, relevant policies of neighbouring provinces and input from different provincial line departments.

TABLE 5.4
GAUTENG LONG-TERM PLANNING

PROVINCIAL MEC (delegated by Premier)		REGIONAL District municipalities		LOCAL Metropolitan and Local Municipalities	
<i>Must</i>	formulate Gauteng Integrated Development Framework (IDF)	<i>Must</i>	formulate District Spatial Development Framework	<i>Must</i>	formulate Spatial Development Framework
<i>Must</i>	formulate Gauteng Spatial Framework			<i>Must</i>	form part of Integrated Development Plan (IDP) section 42 (3)
	Reviewed at least every five years				
INSTITUTIONS					
Commission (on MEC's request)		Commission (on MEC's request)		Commission (on MEC's request)	

The Gauteng spatial framework's purpose is to guide decisions relating to the location and nature of physical development.

The framework must indicate the most desirable settlement patterns and contribute towards redressing past spatial imbalances. It will indicate where growth and development should occur, and where it should be discouraged as well as indicating areas requiring public or private intervention due to historical problematic settlement patterns. The framework must take into consideration integrated development plans and spatial development frameworks from municipalities, input from provincial line departments and relevant documents from neighbouring provinces.

Section 41 states that all land development undertaken by any provincial department must be consistent with both the Gauteng integrated development framework and the Gauteng spatial framework.

District municipalities must formulate a district spatial development framework that will be a broad framework for the district as a whole, within which local municipalities must formulate more detailed and specific spatial development frameworks.

The metropolitan and local municipalities are compelled to prepare spatial development frameworks with the purpose of providing a visual representation of desirable spatial form. The spatial development framework must include a vision, goals, objectives, programmes and projects for development and integration of formerly disadvantaged areas. It must be aligned with neighbouring municipalities spatial development frameworks, the spatial component of the Gauteng integrated development framework as well as any national and provincial policies in respect to spatial development.

Local government is given extensive power in section 50 in terms of the spatial development frameworks. Bodies that make decisions about any land development application cannot approve an application if the application is inconsistent with the spatial development framework for the area. The exception is if it is inconsistent with the spatial development framework, but is consistent with the general principles and it is in the interest of the public good.

Land Development Objectives (LDO's) prepared by municipalities in terms of section 26 and any regulations published in terms of section 27 of the Development Facilitation Act (67 of 1995) will have no effect when the Gauteng integrated development framework and spatial development frameworks have been formulated (section 49).

5.3.4 KwaZulu-Natal Planning and Development Bill (Draft 2001)

The KwaZulu-Natal Planning and Development Bill mainly focuses on local government as the instrument for preparation and implementation of long-term planning. Long-term planning is summarised in Table 5.5.

The Minister is given the power to prepare provincial policies on planning, development and environmental management. These policies should be directed towards the setting of provincial norms and standards, the coordination of planning, development and environmental management. Section 50 limits the provincial responsibility, as prescribed in the preamble (see general principles).

TABLE 5.5
KWAZULU-NATAL LONGTERM PLANNING

PROVINCIAL Minister		LOCAL Metropolitan and Local Municipalities	
<i>May</i>	prepare policies on planning, development and environmental management	<i>Must</i>	prepare Land Use and Environmental Management Plans (including rationalised existing town planning schemes or land use management plans)
		<i>Must</i>	be aligned to Integrated development plan (IDP)
INSTITUTIONS			
None		None	

The general purpose of land use and environmental plans must be to co-ordinate and harmonise environmental sustainable development. The plan must reflect the pressure to develop (need for planning) or protect land (need for conservation). It must take into account the authority's financial and institutional capacity and must as far as possible accommodate the existing customs and settlement patterns.

The content of the land use and environment management plan is divided in two parts, what it must contain (compulsory), and what it may contain (optional). A differentiation is made between the land use management plan's content and the environmental management plan's content.

The land use management plan must be a single system that indicates desirable land uses (specify classes of development permitted and prohibited) and deals with the management of land in general. It consists of a map, written statement, diagrams and illustrations necessary for explanation of the provisions.

The environmental management plan must include the communities' goals about the natural and built environment, a spatial plan depicting environmentally sensitive areas, features and sites as well as performance indicators for environmental standards and guidelines. The land use and environmental management plan may include information such as floor area and coverage limitations, building height and density limits.

Power is given to land use and environmental management plans (section 9) as no authority, Development Tribunal or any organ of state may approve any application for the use, development or subdivision of land if it is in conflict with the plan. If the land use and environmental plan is in irreconcilable conflict with an integrated development plan, the integrated development plan shall prevail.

5.4 LAND DEVELOPMENT MANAGEMENT

The term land development management (Green Paper on Development and Planning, 1999: 57) is the management of new land development and the change of existing land use. Land development management includes “land development” as defined by the Development Facilitation Act. The management performed by the public sector, is reactive through mostly control mechanisms.

Land development management has two goals, firstly to provide effective protection to the natural environment and members of the public from negative impacts of land development or change of land use. The second goal is to provide a reliable degree of certainty of the scale, extent and nature of permissible land development to developers, members of the public as well as all government spheres (Green Paper on Development and Planning, 1999: 59).

Land development management in the different provinces will be analysed in the order of:

- zoning,
- subdivision and
- removal of restrictions.

5.4.1 Western Cape Planning and Development Act (7 of 1999)

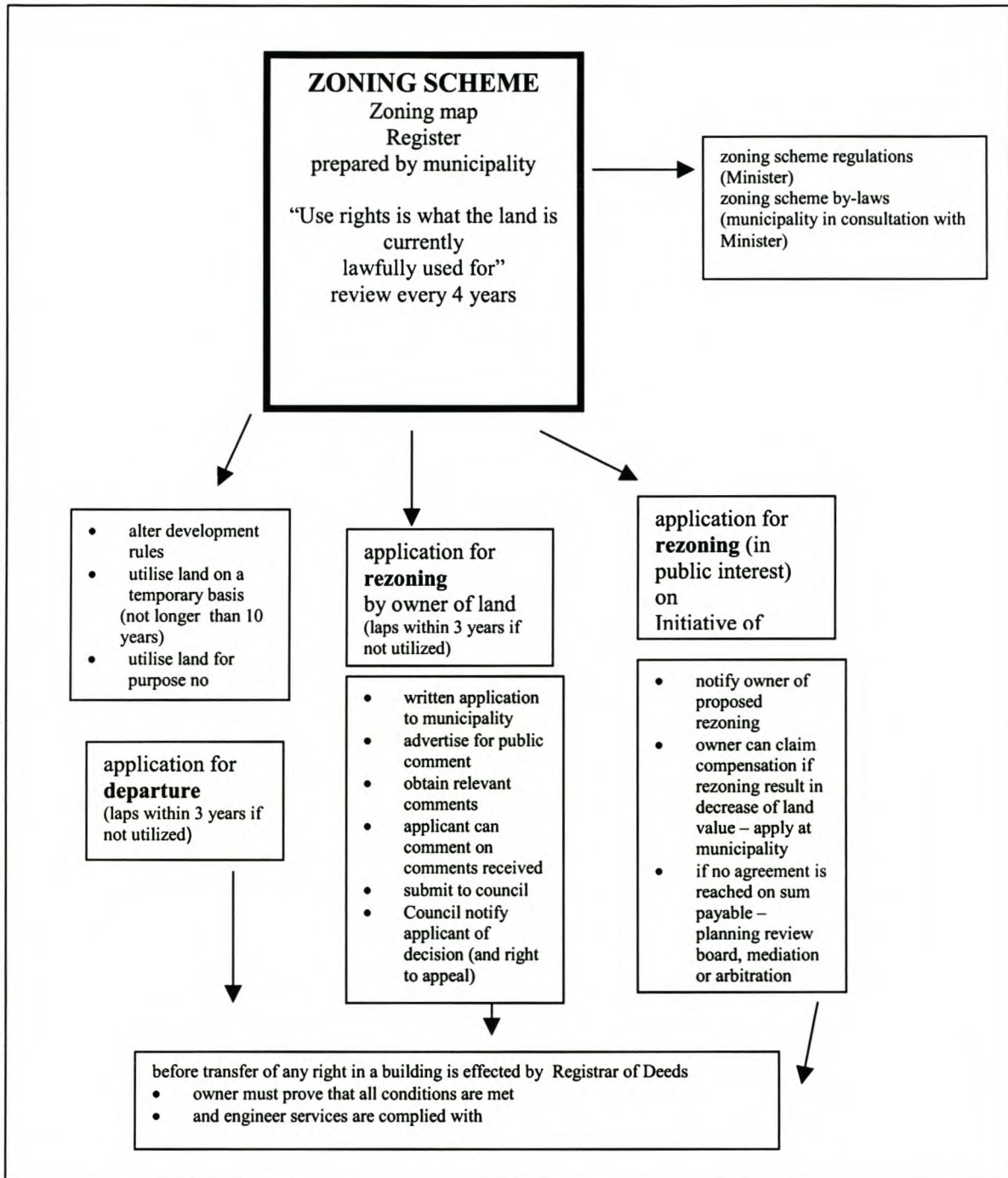
Land use management is addressed in Chapters 2 – 5. The mechanisms and procedures dealing with zoning is illustrated in figure 5.1. The main instrument is zoning scheme, with the general purpose of promoting and implementing the general principles, integrated development framework and sectoral plans. It also determines the use rights, in order to manage growth and urban and rural land development (section 9). Existing town planning schemes, listed in the Schedule V, VI as well as scheme regulations under section 8 of the Land Use Ordinance will remain in force.

The zoning scheme will consist of a zoning map showing zones and land units and a register containing consent uses. Zoning scheme regulations and by-laws can provide for the different methods of zoning or managing land use and land development, show primary and consent uses as well as the imposition of development rules.

The most important aspect of zoning in the Western Cape is that use rights on land is what such land is currently lawful utilised for. Chapter 3 sets out the procedures for subdivision. The principle that must be upheld at all times is that zoning must always precede subdivision. This principle does not prevent the applicant to apply for a rezoning and a subdivision at the same time. The procedures for subdivision are explained in figure 5.2.

The Act also makes provision that the responsible municipality may, when granting an application for subdivision impose conditions relating to the compulsory establishment of an owners' association by the applicant for the subdivision. The owners' association is a body corporate and will automatically after confirmation of the subdivision become the owner of all communal property. Chapter 5 prescribes the procedure for the removal of restrictions. This process can be explained through figure 5.3.

FIGURE 5.1
WESTERN CAPE ZONING



In Chapter 4 provision is made for accelerated development, only applicable where land is to be made urgently available for subsidised housing, small scale farming projects or where human need restitution of land rights or reconstruction so requires. The municipality can apply that any restrictions or legal provisions relating to planning, development or utilisation

of such land be suspended or removed. This shall ensure that development is accelerated in the interest of the public good. The concept of initial ownership is also introduced in the chapter, similar to the provisions in the Development Facilitation Act (67 of 1995).

FIGURE 5.2
WESTERN CAPE SUBDIVISION

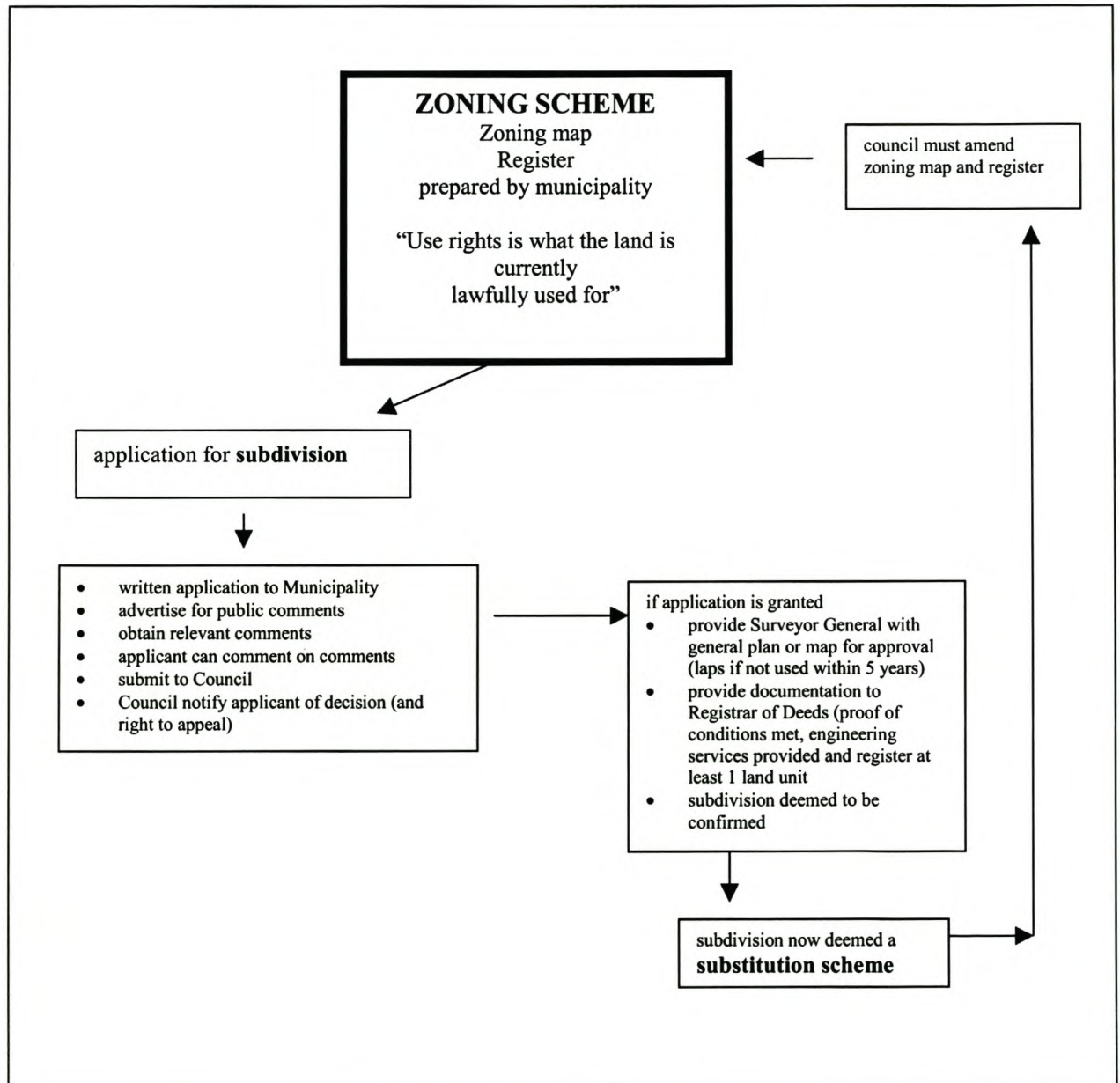
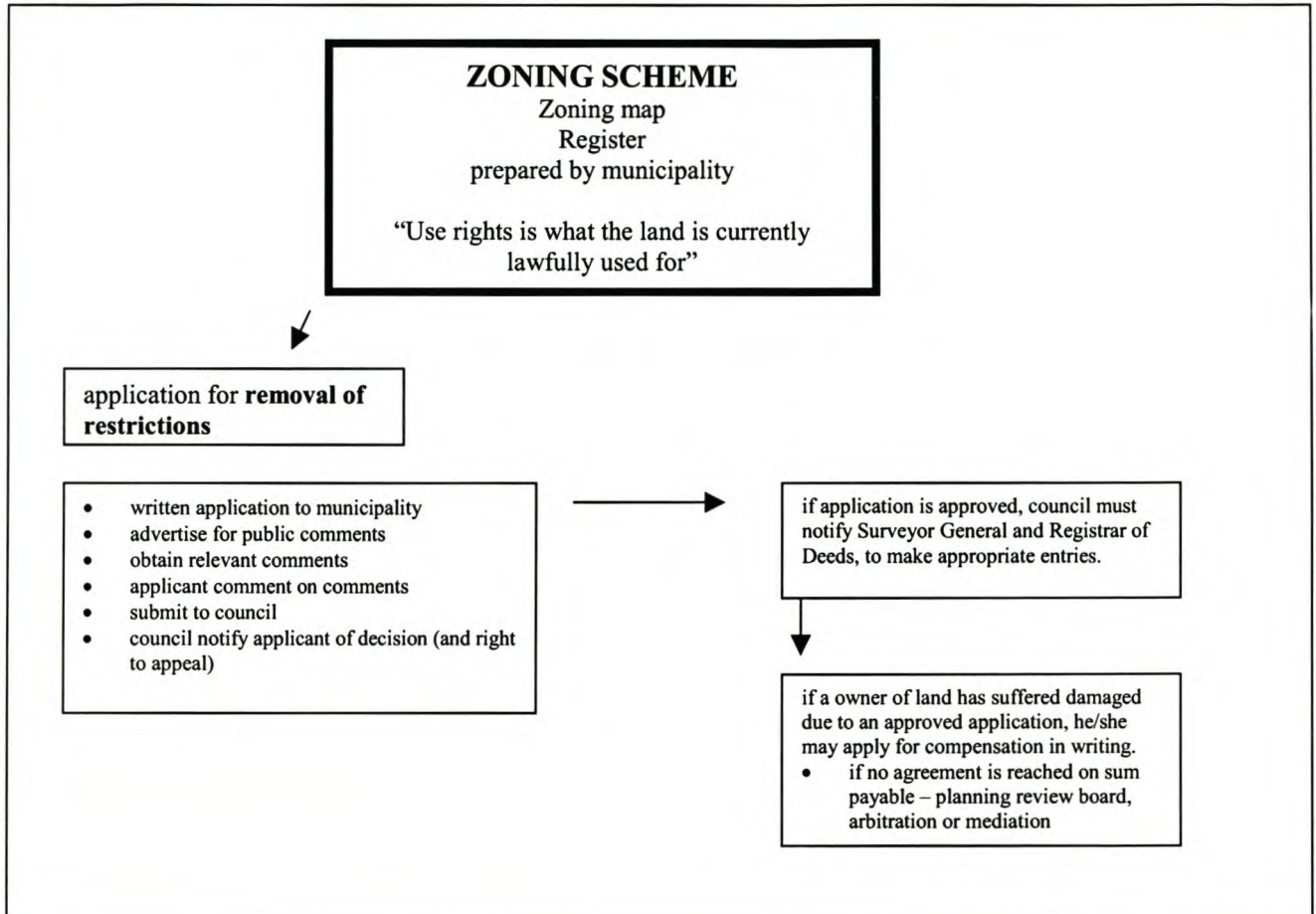


FIGURE 5.3
WESTERN CAPE REMOVAL OF RESTRICTIONS



5.4.2 Northern Cape Development and Planning Act (7 of 1998)

Chapter 5 of the Northern Cape Development and Planning Act introduces zoning schemes, land development procedures and regulations as mechanisms for land use management. Each local council must formulate and implement these mechanisms in its area of jurisdiction.

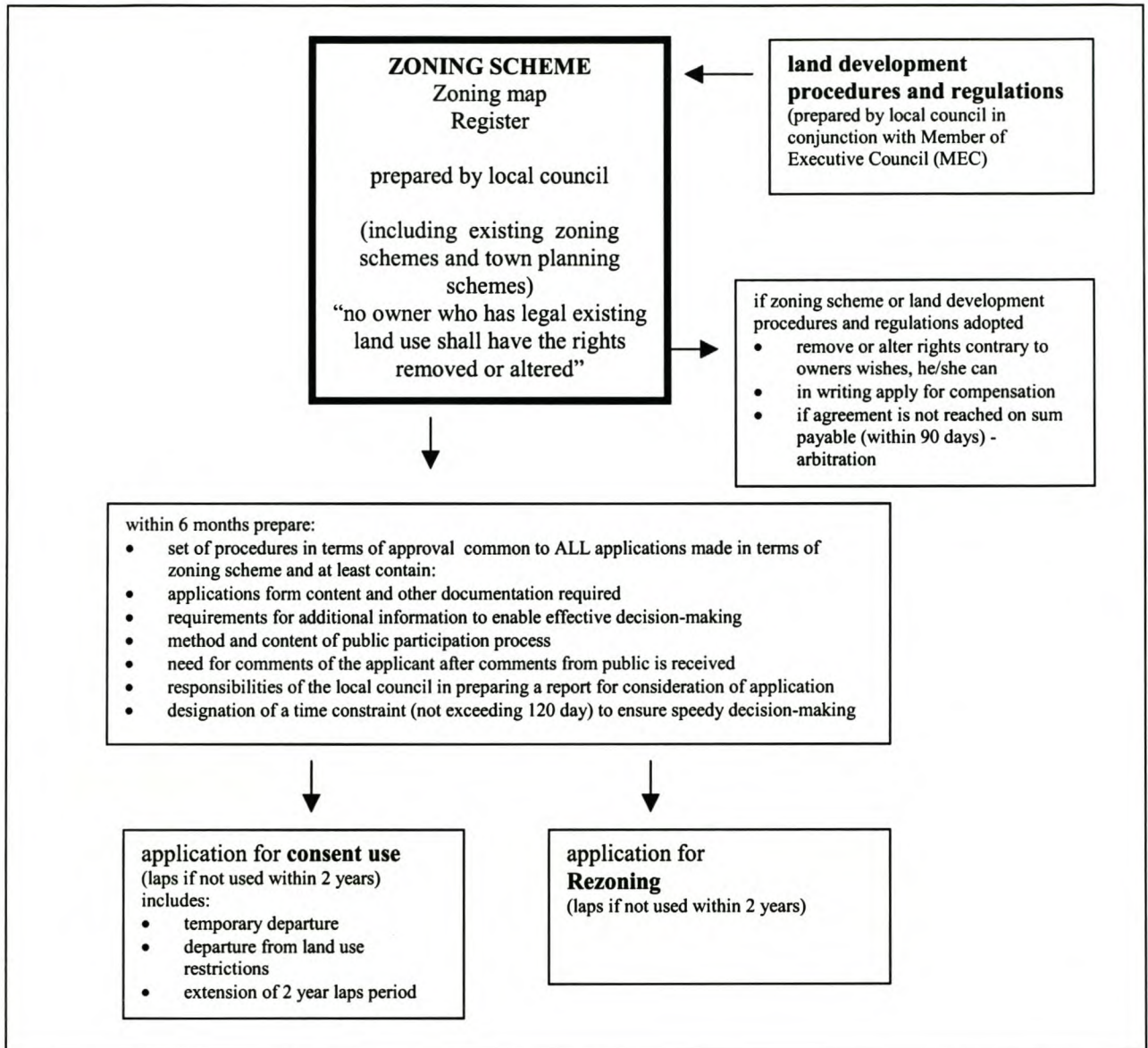
The procedures related to zoning are summarized in figure 5.4. The purpose of zoning schemes and land development procedures and regulations will be to give effect to the implementation of the Land Development Plan. The zoning scheme will allocate and define land development rights to enable the most effective use of existing and proposed infrastructure and protect and enhance environmentally sensitive areas in the city and rural

areas. The zoning scheme should also make available suitable land for economic development (in particular the informal sector) and optimise access opportunities between places of work, retail, recreation and residence.

The zoning scheme must include a zoning map that will show the spatial distribution of zones, differentiation by land use activities, intensity of utilisation or any other form of differentiation. A register must also be kept and regularly updated with recordings of any altered land use or development right granted. These requirements for zoning can be presented in figure 5.4.

Existing zoning schemes and town planning schemes (in terms of section 7(1) and 8 of the Land Use Planning Ordinance (15 of 1985), regulations under the Black Communities Development Act (4 of 1984) and in terms of section 20 (2) (b) of the Rural Areas Act (9 of 1987)) will be deemed a zoning scheme if it complies with section 41 of the Act.

FIGURE 5.4
NORTHERN CAPE ZONING



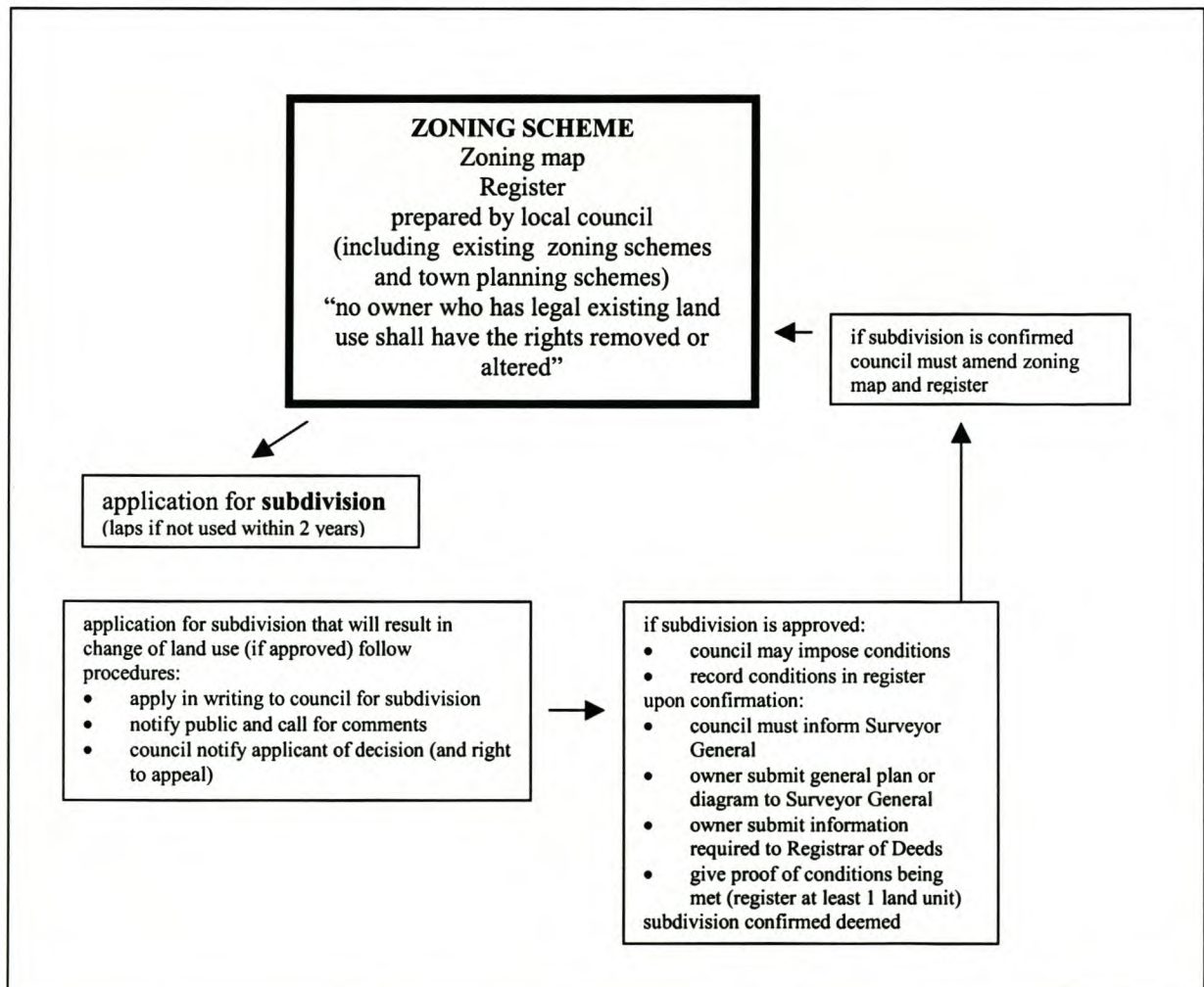
The land development procedures and regulations will enable land use changes from one category of use to another, as well as granting consent use. Departures from restricted use, urban renewal, upgrading of informal housing settlements, development of environmentally sensitive areas as well as any other mechanism appropriate for the realisation of the Land Development Plan should also be included.

An application for the removal of amendment, suspension or removal of a restriction against a title deed can be made to the local council. Any person who suffered a decrease in monetary value as a result of amendment, suspension or removal of a restriction, can claim compensation from the person who applied.

Chapter 6 deals with subdivision of land and is illustrated in figure 5.5. If an application for a subdivision of land result in a change of zoning, the approving authority call for comments and objections to the changes in the zoning simultaneously with the subdivision application.

Following approval, the change in zoning shall be recorded on the zoning map, and if conditions are imposed, it will be recorded in the register. Provision is made for initial ownership as well as the imposing of the condition (when approving a subdivision) for the compulsory establishment of an owner's association by the applicant of the subdivision.

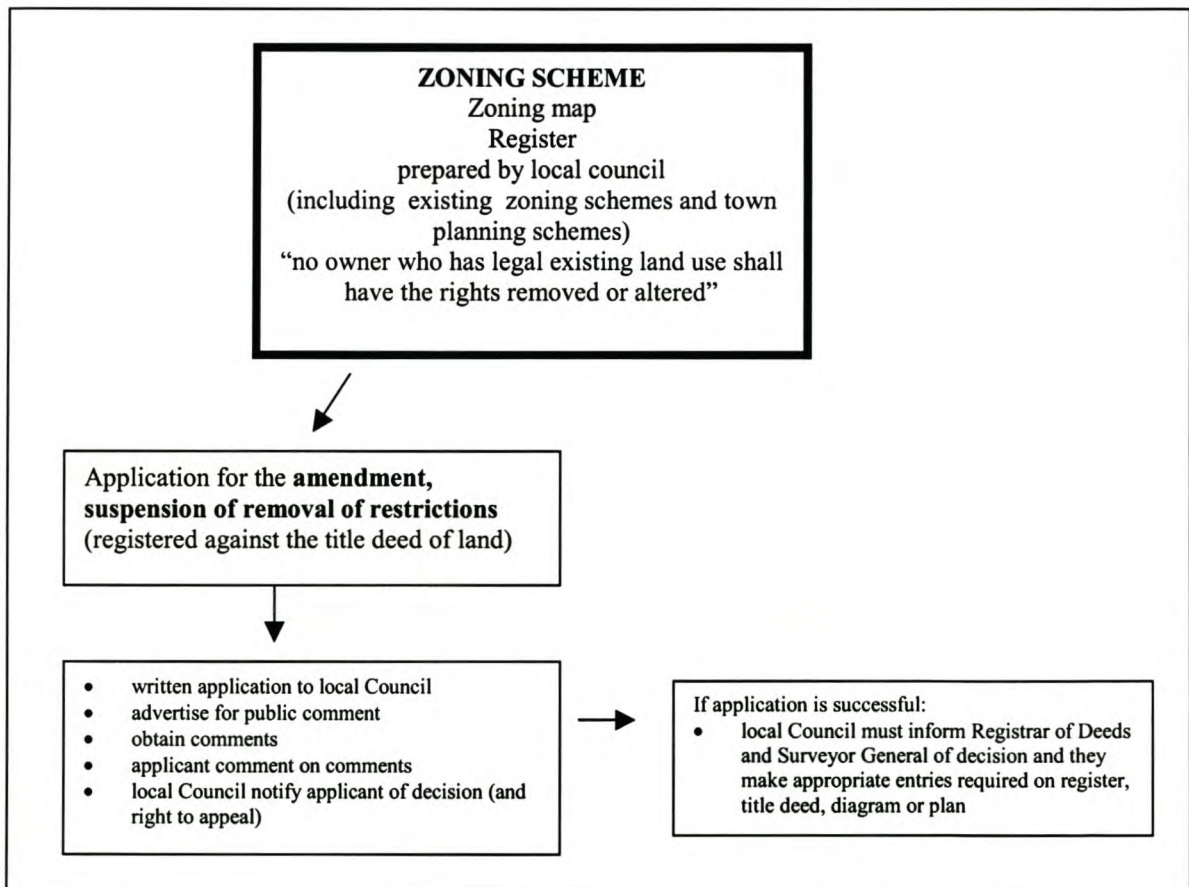
FIGURE 5.5
NORTHERN CAPE SUBDIVISION



Section 58 deals with the conversion of informal tenure in ownership and should be done in the manner prescribed in terms of subsections 63 (2) and (3) of the Development Facilitation Act (67 of 1995). Within a period of two years after application has been approved, all rights not utilised shall lapse.

Chapter 7 of the Act makes provision for the procedures involved in the removal of restrictions and is illustrated in figure 5.6.

FIGURE 5.6
NORTHERN CAPE REMOVAL OF RESTRICTIONS



5.4.3 Gauteng Planning and Development Bill (Final Draft 2000)

The Gauteng Planning and Development Bill makes provision for the preparation, administering and enforcement of land use management schemes (Chapter 5) by every local municipality in the Province.

The land use management scheme as illustrated in figure 5.7 is a record of permissible land uses and should cover all land within the jurisdiction of the municipality. It is the purpose of these schemes to define and regulate the use of land, regulate the type, extent and scale of buildings erected (or to be erected) on any portion of land. A record should be maintained of the purposes for which land may be used as well as conditions applicable to such uses.

The Member of the Executive Council (MEC) is given the power to make regulations related to land use management schemes, for example provisions and certain minimum requirements for land use management schemes.

Existing schemes shall continue to operate on the condition that from the date of the commencement of this act, any changes to any existing scheme shall be made in accordance with the provisions of this Act. Where there is conflict between the land use management scheme and a by-law of a municipality, the scheme shall have precedence.

The land use management scheme makes provision to deal with consent use by imposing conditions (including payment) for consent that is granted. If there is any non-conforming land uses (uses utilized but no provision is made for in the new land use management scheme) the use of land may continue for fifteen years.

Local authorities are given power to promote the purpose of land use management schemes through measures such as the acquiring of land, erecting of any building, letting, alienating or disposing of any land or building or any other steps as it may deem expedient.

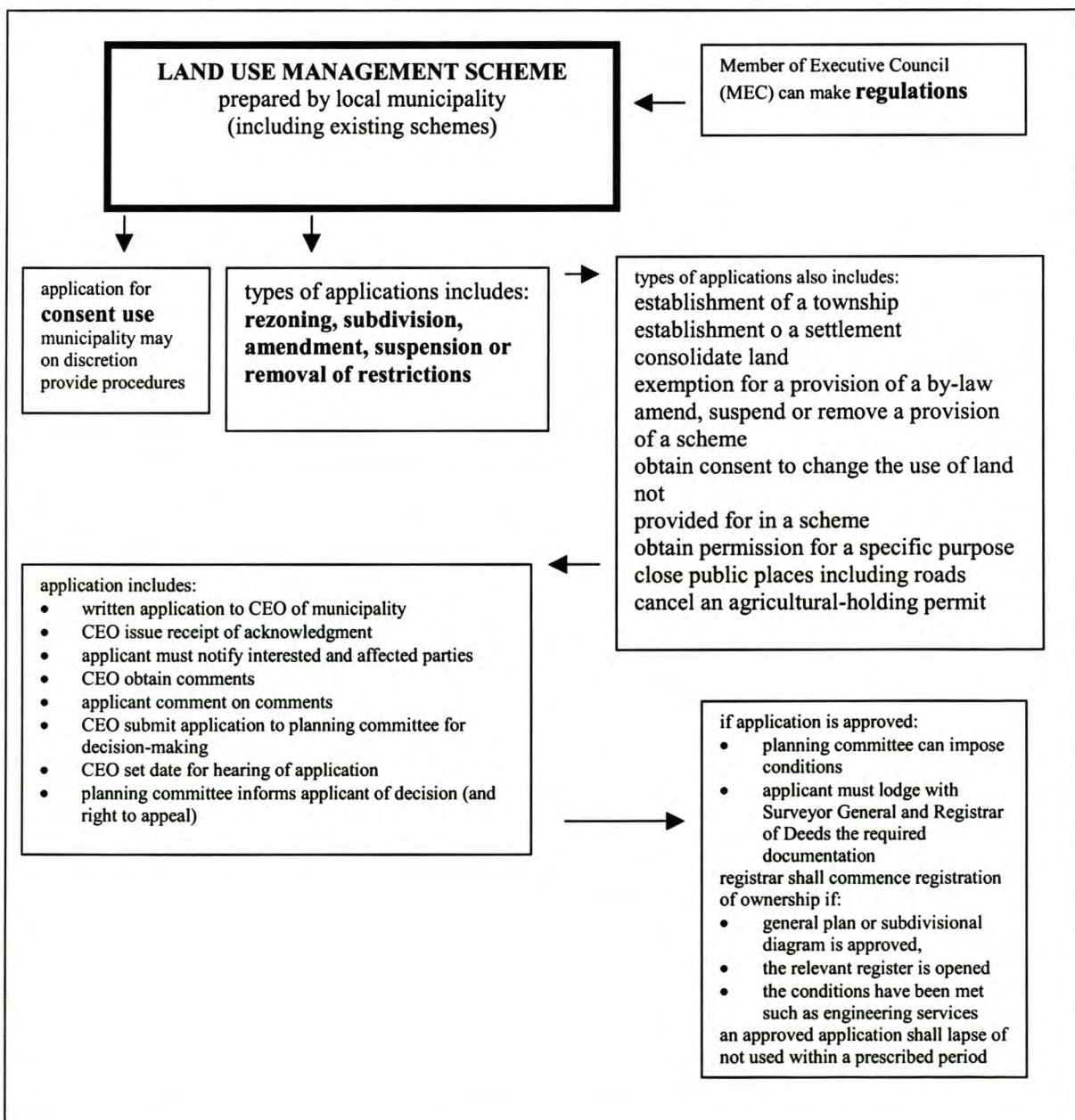
Chapter 7 deals with development procedures with the purpose of regulating all processes and procedures for applications of different categories of development. The planning committee can give (on application) exemption of certain prescribed provisions for development procedures.

An application for development should be lodge with the Chief Executive Officer (CEO) of the municipality, who will advertise for comments and objections, furnish the applicant with all comments for resubmission and finally present the application (with his/her report and

recommendations) to the planning committee for consideration. A hearing of the application will precede the final decision of the planning committee.

An approved application can include conditions that must be met by the applicant. The applicant must provide the Surveyor-General and the Registrar of Deeds the required documents and information to approve the general plan or map.

FIGURE 5.7
GAUTENG LAND USE MANAGEMENT SCHEME



The planning committee could on own initiative or on application (in accordance with section 83) remove a servitude or restrictive condition of it will unnecessarily delay a development. This can be seen as the means for accelerated development. The MEC is given the power in section 92 to make regulations necessary for the effective execution of development procedures.

5.4.4 KwaZulu-Natal Planning and Development Bill (Draft 2001)

Chapter 2 of the KwaZulu-Natal Planning and Development Bill provides for the use or development of land. Section 12 states that no person will be required to obtain approval for the use of land if it is for the erection of the first dwelling unit and any outbuildings associated therewith. It also includes the dwelling unit or any outbuildings is erected on land that is allotted under tribal law or custom or if the land is used for the cultivation of crops or rearing of animals and a first dwelling unit and structures associated is erected.

The standard application procedure is prescribed in schedule 4. A distinction is made between different applicants - the responsible authority, a private person or other organ of state.

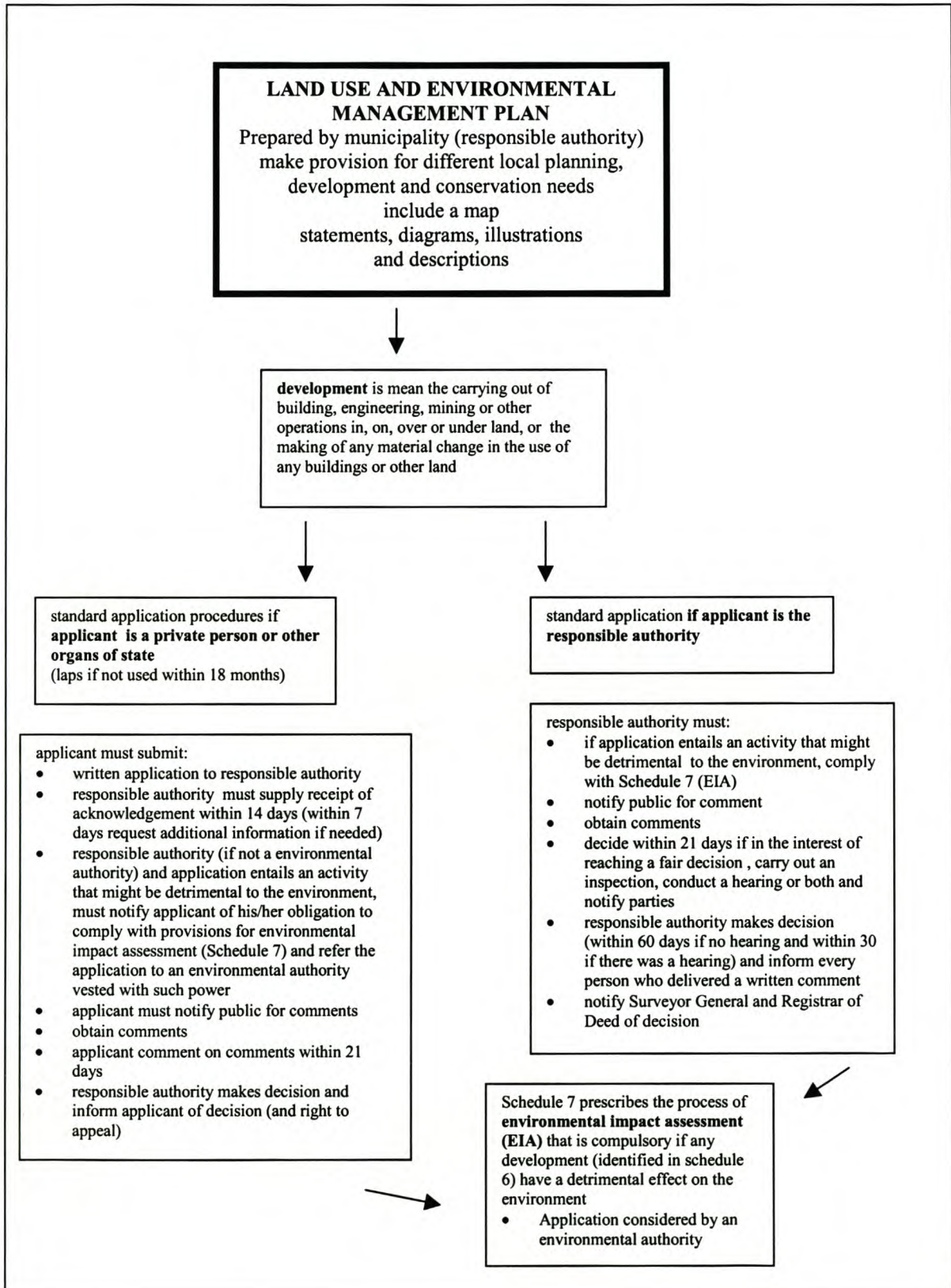
The land use and environmental management plan (prepared by municipalities) must consist of a map, a written statement, diagrams, illustrations and descriptions necessary for the explaining of the content of the plan. It must define the classes of development permitted and rationalise all existing town planning schemes and land use management plans (prepared in terms of this Act). The working of the land use and environmental management plan can be illustrated in figure 5.8.

The metropolitan or local municipality (the responsible authority) concerned will consider applications for the use and development of land. The application may not be approved if it is irreconcilable with the integrated development plan or the land use and environmental management plan of the area concerned. If land use or development is permitted in terms of the above, and the authority is not satisfied that it is possible to prevent interference with the amenity of the neighbourhood, significant damage to the environment or that the environmental impact assessment has been refused (by another authority such as provided for

in the section 21 and 26 regulations of Environmental Conservation Act), it must refuse the application.

FIGURE 5.8

KWAZULU-NATAL USE AND DEVELOPMENT OF LAND SYSTEM



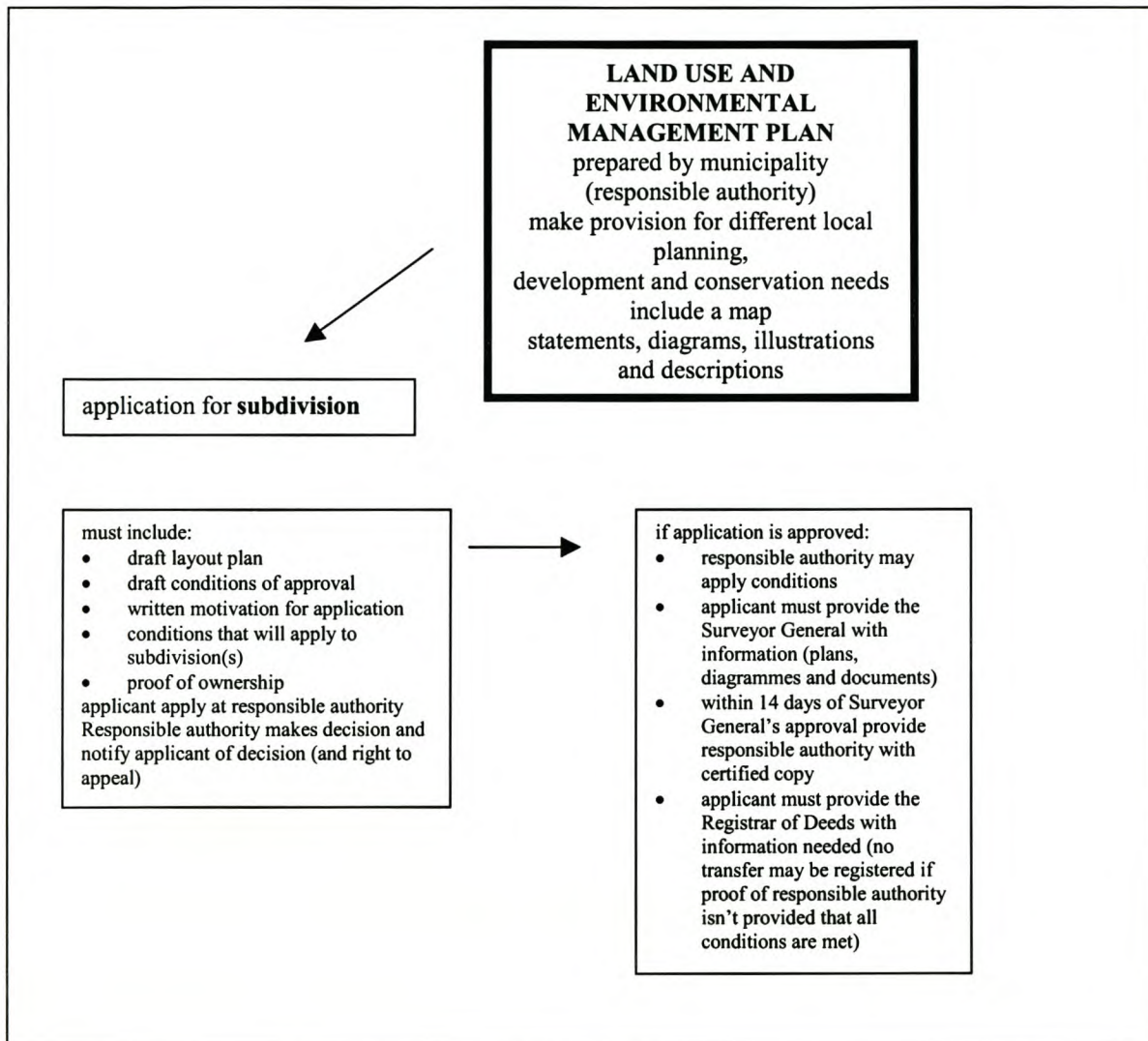
If the application is approved, the responsible authority may introduce conditions. These conditions may include the compulsory establishment of a fund or the provision of a guarantee, for the purpose of mitigating any environmental damage that may be caused as well appropriate standards of engineering services.

The approval granted will be valid for a period of one and a half years, and will lapse if the rights granted have not been exercised. If the applicant was granted the application, and failed to install the engineering services the responsible authority may at the expense of the applicant install and provide the services.

Subdivision of land is dealt with in Chapter 3 and illustrated in figure 5.9. The metropolitan or local municipality concerned will consider the application. The application may not be approved if it is irreconcilable with the integrated development plan or in conflict with the land use management scheme. If the application is permitted in terms of the above, but the responsible authority is not satisfied that it is possible to prevent interference with the amenity of the neighbourhood or significant damage to the environment, it must be refused (also including if permission was refused for example by the 21 and 26 regulations of the Environmental Conservation Act).

If the application is granted, conditions may be imposed. The applicant of the granted application must lodge for approval with the Surveyor General all documents that may be required. As soon as the general plan has been approved an application must be made to the Registrar of Deeds. No transfer may be registered at the Registrar of Deeds until the responsible authority has certified that the conditions of approval have been fulfilled.

FIGURE 5.9
KWAZULU-NATAL SUBDIVISION



5.5 INSTITUTIONS

Spatial planning with pro-active and decision-making components alone is not enough to ensure the successful implementation of the different mechanisms. Local government does not always have the capacity (human, financial and institutional resources) to prepare, implement and manage planning and development related activities. The different provincial acts introduced different institutions, bodies and commissions to assist with planning and development on provincial as well as local level.

The institutions will be analysed and compared by classifying them under:

- advisory-
- ratification- and
- appeal institutions.

5.5.1 Western Cape Planning and Development Act (7 of 1999)

The Western Cape Planning and Development Act introduced a range of institutions summarised in Table 5.6.

The most important aspect concerning institutions and bodies created by the Act is that the Western Cape did not introduced institutions as provided for in the Development Facilitation Act (67 of 1995). In contradiction with all other the eight provinces (who established development tribunals (section 5) and in some cases Development Tribunals (section 15)) the Act introduced its own unique institutions.

The Minister may establish (section 3) a joint committee to assist him/her in the preparation of a Provincial development framework as well as a sectoral plan for a region larger than one district municipality or a metropolitan area (the Cape Metropole).

When two or more municipalities enter an agreement, they can establish a permanent or ad hoc joint committee to undertake matters of planning. A municipality or a joint committee can establish technical advisory committees, consisting of members of the municipality, government, provincial department or any other body, that will advise on matters relating to planning and development.

The planning review board is the most important institution created by the Act. Section 48 and 49 prescribes the procedures the Premier must follow to establish the board. The planning review board will consist of a chairperson and at least four members appointed from the panel.

The planning review board deals with appeals and section 50 identifies bodies and persons that have a right of appeal against a decision taken in terms of this Act.

When conducting appeals extensive powers is given to the planning and review board such as the right of the chairperson to subpoena any person to give information or appear before a hearing. A record must be kept of all proceedings, evidence and decisions of the board.

When an appeal is lodge, the planning review board has six different ways of dealing with the appeal (section 51(7)). The planning review board can:

- review the case,
- refer the matter back to a municipality,
- refer the matter for mediation,
- if the case is too difficult and complex refer it to competent court of law,
- refer it to the Minister or
- refer the case back to the municipality if the matter concern capital expenditure that was not included in the budget of that current financial year.

TABLE 5.6
WESTERN CAPE INSTITUTION/BODIES

ADVISORY		RATIFICATION		APPEAL	
ESTABLISHED BY	PURPOSE	ESTABLISHED BY	PURPOSE	ESTABLISHED BY	PURPOSE
Technical advisory committee <ul style="list-style-type: none"> municipality (may) joint committee (may) 	advise the a council or joint committee on any matters relating to planning	municipal council (already in place)	consider and decides (grant or refuse) on applications relating to land use management (departures, rezoning, subdivision, initial ownership and removal of restrictions)	planning review board <ul style="list-style-type: none"> Premier 	deals with appeals and can act as mediator in a dispute
joint committee <ul style="list-style-type: none"> provincial Minister (may) 2 of more municipalities (may) (in a joint undertaking) can be permanent or ad hoc 	undertaking of planning matters in the preparation of a provincial IDF or sectoral plan for a region affecting more than 1 district council or metropolitan area advise a council or joint committee in connection with any matter relating to planning and development				
panel of mediators <ul style="list-style-type: none"> Provincial Minister (must) 	consult with parties involved in a dispute, conduct any inquiries necessary and prepare a report on the outcome for the parties				

5.5.2 Northern Cape Development and Planning Act (7 of 1998)

Chapter 2 of the Northern Cape Development and Planning Act (7 of 1998) makes provision for the Member of the Executive Council (MEC) to establish the Northern Cape Planning and Development Commission (hereinafter referred to as the “Commission”). The Commission consists of a chairperson, deputy chairperson and a maximum of four members.

The Commission has the function of advising and making recommendations to the MEC on matters prescribed in section 7. The MEC or any other body or person can direct a matter to the Commission in regard to its functions, and the Commission must then conduct an investigation. The Commission can subpoena any person to furnish information at a hearing.

A unique institution created in the Province is the Forum for Co-operative Planning and Development in the Northern Cape (hereinafter referred to as the “Forum”). This institution and other bodies are listed in Table 5.7. The Forum will consist of:

- all MECs of their Departments who are influenced by and oversee issues dealing with planning and land development,
- the chairpersons of the Executive Committees of all district councils and
- the Commission.

It will also include two representatives from the Northern Cape Local Government Association, four persons nominated who own property and no more than four persons representing organisations and community-based groups in civil society. The Forum will be chaired jointly by the MECs for Housing and Local Government and for Economic Affairs and Tourism.

The Forum has the function (through mediums like co-operation, communication, capacity building, training and empowerment) to ensure the efficient implementation of general principles and that the duties and responsibilities allocated to different spheres of government regarding planning and development are exercised. The Forum should ensure that the private and investment sector as well as the community become active participants in planning. The forum can establish where necessary working groups and utilise the Development Co-ordinating Committee to ensure the realisation of these functions.

An appeal tribunal will be established in terms of the Development Facilitation Act (67 of 1995) and shall have the duties and powers as assigned to it in terms of section 24 of the Development Facilitation Act (67 of 1995). The appeal tribunal will consist of five members nominated by Premier, provided that at least one member have knowledge of the law.

TABLE 5.7
NORTHERN CAPE INSTITUTIONS/BODIES

ADVISORY		RATIFICATION		APPEAL	
ESTABLISHED BY	PURPOSE	ESTABLISHED BY	PURPOSE	ESTABLISHED BY	PURPOSE
Northern Cape planning and development commission <ul style="list-style-type: none"> Member of the Executive Council (MEC) (must) 	<p>advise and make recommendations to the MEC on matters (inconsistencies and inefficiencies in administration, mismanagement of the Act and lack of co-operation between departments.</p> <p>Prepare guidelines, regulations and users manuals for implementing the Act.</p> <p>Conduct any inquiry into the implementation and operation of the Act</p>	municipal council (already in place)	<p>consider and decides (grant or refuse) on applications relating to land use management (departures, rezoning, subdivision, initial ownership and removal of restrictions)</p>	appeal tribunal <ul style="list-style-type: none"> in terms of the DFA (67 of 1995) 	<p>deals with appeals but can first refer it for mediation after consultation with the parties</p>
forum for co-operative planning and development <ul style="list-style-type: none"> Member of Executive Council (MEC) (must) 	<p>ensure through mediums (such as information dissemination and, training) that the general principles and any national policy related to planning and development is implemented in effective way</p> <p>co- ordinate the powers, duties and responsibilities of local and provincial government regarding planning</p> <p>ensure public “buy-in” through participation in formulation and implementation of planning and development policies and programmes</p>				
working groups <ul style="list-style-type: none"> forum for co-operative planning and development (must) 	<p>to assist with the functions of the Forum for Co-operative Planning and Development</p>				
working groups <ul style="list-style-type: none"> Member of Executive Council (MEC) (must) 	<p>consult with parties involved in a dispute, conduct any inquiries necessary and prepare a report on the outcome for the parties</p>				

5.5.3 Gauteng Planning and Development Bill (Final Draft 2000)

The Gauteng Planning and Development Bill makes provision for establishing institutions listed in Table 5.8.

Chapter 3 makes provision for the Minister to establish a Gauteng Development and Planning Commission. The Commission will consist of nine members, of whom one must represent municipalities, one person representing persons or bodies owning property, one representing civil society and six who has experience relevant to the function of the Commission.

The purpose of the Commission is to advise and make recommendations on request of the MEC relating matters of planning, which include the integrated development and spatial planning, land use management and development in the province.

The Commission may in section 19 (2) be requested to monitor the implementation of certain plans, frameworks and the application of the principles. A unique purpose is that the Commission may (on request of the Minister) play the role of an ombudsperson relating to development and planning.

The Act make specific provisions for establishing bodies that will be responsible for decision making on matters relating to land development. Every municipality must designate a committee or committees in terms of section 79 of the Local Government: Municipal Structures Act 1998 (117 of 1998).

The purpose of planning committee will be to hear and decide on applications made in terms of development procedures as described in Chapter 7 of the Act. The committee can also make recommendations to the council relating to the adoption of a spatial development framework and land use management schemes.

Power is given to the planning committee to receive an application, conduct a hearing followed by the approving, postponing or rejecting of the application. The committee can also receive complaints relating contravention of the provisions in the land use management scheme. If the complaint is justified, a fine may imposed, a contravention notice may be

served and a demolition order may be issued in relation to any structure or building that in contravention of the provisions of the scheme.

A development appeal tribunal for the province must be established by the MEC, providing the recognition of any body of persons, tribunal board or Commission established under any other law as a development appeal tribunal. The development appeal tribunal must consist of at least five members with at least one with knowledge of the law. The MEC will designate the chairperson and deputy chairperson.

TABLE 5.8
GAUTENG INSTITUTIONS/BODIES

ADVISORY		RATIFICATION		APPEAL	
ESTABLISHED BY	PURPOSE	ESTABLISHED BY	PURPOSE	ESTABLISHED BY	PURPOSE
Gauteng development and planning commission <ul style="list-style-type: none"> Member of Executive Council (may) or recognise any body of persons established under any law as a Gauteng development and planning commission) 	advise and make recommendations to MEC on: integrated development planning and spatial planning in province, land use management relating to IDP's, any policy and legislation relating to development and planning monitor and report on principles application, Gauteng - integrated development- and spatial plan, spatial development frameworks and the transformation of the land use management system role of ombudsperson on matters relating to development and planning	planning committees <ul style="list-style-type: none"> Municipality (must) 	responsible for decision-making on matters relating to land development (hear an application, hear complaints relating the land use management schemes) make recommendations to council on adopting of a spatial development framework and land use management schemes	development appeal tribunal <ul style="list-style-type: none"> Member of Executive Council (MEC) (must) or recognise any body of persons established under any law as a development appeal tribunal 	deals with appeals (hear and decide)
		<ul style="list-style-type: none"> in terms of section 15 of the DFA (67 of 1995) 	hear and decision-making on certain applications (MEC determine which categories and types of applications shall be made to and heard by)		

5.5.4 KwaZulu-Natal Planning and Development Bill (2001)

KwaZulu-Natal Planning and Development Bill introduces institutions and bodies as summarised in Table 5.9. The Minister may appoint a consultative committee or consultative committees. The function of the committee(s) will be to advise the Minister in the exercising of any of his or her functions or powers under the Act (Section 61).

A planning and development appeal tribunal (known as the appeal tribunal) must be established for the province. One half of the members must be appointed officers in service of the provincial administration and local government bodies and the other half must be persons outside such service. There must be at least four members from a provincial division.

A metropolitan or local municipality (known as the responsible authority) is given the power to consider applications for the use or development of land that does not have a detrimental effect on the environment.

A metropolitan or local municipality can apply to the Minister to be designated as an environmental authority for the consideration of environmental impact assessments. The responsible authority must have the technical competence, capacity and finances available to discharge its functions competently. If an application to undertake any activity that may be detrimental to the environment as listed in Schedule 6, procedures in Schedule 7 must be followed. Schedule 7 makes provision for an environmental impact assessment to be prepared. The application (Schedule 7) can only be heard by environmental authority. If the applicant is not satisfied with the decision, an appeal can be lodged with the Appeal Tribunal within 21 days.

This is an attempt to incorporate the provisions as described in the 21 and 26 regulations of the Environmental Conservation Act (107 of 1998). The Act does not specify the relationship to the regulation. It is understood that the regulations will stay in place and not be repealed, thereby remaining as a separate parallel system.

TABLE 5.9
KWAZULU-NATAL INSTITUTIONS/BODIES

ADVISORY		RATIFICATION		APPEAL	
ESTABLISHED BY	PURPOSE	ESTABLISHED BY	PURPOSE	ESTABLISHED BY	PURPOSE
consultative committees <ul style="list-style-type: none"> Minister (may) 	advise the Minister in the exercising of any of his/her functions and powers under the Act	responsible authority (is the municipality)	considers applications for use or development of land (if application may have a detrimental effect on the environment (an environmental authority must consider the application))	planning and development appeal tribunal <ul style="list-style-type: none"> established by this Act 	deals with appeals (hear and decide), can refer dispute to mediation
panel of mediators <ul style="list-style-type: none"> Provincial Minister (must) 	consult with parties involved in a dispute, conduct any inquiries necessary and prepare a report on the outcome for the parties	environmental authority <ul style="list-style-type: none"> apply to Minister to be designated 	considers applications to undertake any activity that may be detrimental to the environment (listed in Schedule 6 and followed by schedule 7 procedures – environmental impact assessment (EIA))		
		development tribunal <ul style="list-style-type: none"> in terms of section 15 of the DFA (67 of 1995) 	may only consider applications to develop land if applicant has exhausted the provisions of this Act		

5.6 PROTECTION OF THE ENVIRONMENT

The protection of the environment is high on the priority list of national government and give policy direction through the National Environmental Management Act (107 of 1998). The “environment” includes the natural, cultural and historical environment. Consideration of the environment is emphasised in spatial planning through both the pro-active and management components. Sustainable development is central to planning in all three spheres of government. Sustainable development is the integration of social, economic and environmental factors into planning, decision-making and implementation in a way to ensure that development serves present and future generations. The way in which the planning systems of the provinces protect of the environment will be analysed.

5.6.1 Western Cape Planning and Development Act (7 of 1999)

The general principles of the Western Cape Planning and Development Act (7 of 1999) in Schedule 4 has two principles that have important consequences for the environment. Principle 7 explicitly gives protection to the environment by stating that development should consider the natural processes, aesthetic properties and carrying capacity restrictions of any environment. Development should harmonise with the ecological characteristics of the environment. Promotion of sustainable development (principle 6) links this process with protection for the environment. Section 6(1)(3) calls for the promotion of sustained protection of the environment.

The forward planning (long-term planning) component of the Act focuses on the environment by enforcing that the natural and developed environment as well as ecologically sustainable development must be taken into account in preparing integrated development frameworks and sectoral plans (section 4(11)).

Provision is made for an environmental plan - a written strategy or sectoral plan that deals with environmental concerns in a particular area. Metropolitan or local municipalities can adopt the environmental plan as part of their integrated development framework. The Minister is given the power to identify activities that must comply with the provision of an environmental impact assessment (EIA).

In the management of land use (control component) protection for the environment are provided through overlay zoning. This mechanism creates a category of directives and development rules applicable to a specific area. It does not change the underlying zonings of land units within the area, but designates such area for environmental protection (or any other purpose) as set out in the zoning scheme regulations.

The Province is open to initiatives from the private sector concerned with spatial planning and the protection of the environment. This illustrates the commitment of Province to co-operation with people and institutions outside the public sector sphere of government. The consultants Dennis Moss Partnership Inc together with the Department of Planning, Local Government and Housing introduced the concept of bioregional planning and management for the integrating of the planning system with sustainable management of the environment (Provincial Government of the Western Cape, 2000: 1-36).

5.6.2 Northern Cape Development and Planning Act (7 of 1998)

In preparing Provincial-, District- and Land Development Plans' one of the purposes is to ensure the protection and sustainable utilisation of land, water and air. This is to ensure the maintenance of ecologically sensitive systems, processes and areas of biological diversity. The impact that activities have or could have on ecological sensitive systems or processes must inform the Provincial Plan when considering policies and implementation strategies. Consideration of any measure to protect or enhance these areas must be a priority.

Land use management mechanisms should allocate and define land development rights in a way that will protect and enhance the parts of the city/town or rural areas which are environmentally sensitive or are of high public amenity value in subsection 37(2)(e). These mechanisms include zoning schemes and local development procedures and regulations. The MEC can make regulations and guidelines (including environmentally sustainable application procedures) for the measures to protect the environment.

5.6.3 Gauteng Planning and Development Bill (Final Draft 2000)

One of the general principles in the Gauteng Planning and Development Bill is to promote sustainable development through the encouragement of environmentally sustainable and optimal land development practices and processes.

The Gauteng spatial framework and spatial development frameworks makes provision for the indicating of the urban edge in subsection 37(2)(a) and 43 (1)(c) respectively.

Land use management schemes has one of its purposes to prevent the use of land for purposes or activities that may not be permitted. A responsible authority must take into account the environment in the consideration of a land development application in section 77(f).

5.6.4 KwaZulu-Natal Planning and Development Bill (Draft 2000)

The preamble of the KwaZulu-Natal Planning and Development Bill states that the Act should promote an environmental ethic of sustainable use to contribute to the creation and maintenance of an environment that enhances the health and well being of the inhabitants.

At the earliest stage feasible an assessment of the environmental impact should be incorporated in the process of development of land.

Land use and environmental management plans must reflect the 'pressure to develop or protect land'. This choice of wording indicates that the metropolitan and local municipalities should not only focus on development but also the need for protection of land. Almost half of the objectives that deal with the land management component of these plans focus on protection. It includes the protection and amenity of adjacent land uses, natural resources, agricultural resources, unique areas or features.

The environmental management component of the plan includes a statement expressing the communities' goals in respect of elements of the natural, built, social and cultural environment. It must also include a spatial plan depicting environmentally sensitive areas, features and sites of historical and archeological significance. It must define performance indicators such as qualitative and quantitative environmental standards and guidelines (Part 1 of Schedule 3).

When an application is made for the use of development of land and it involves an activity prescribed under Schedule 6 (activity that may be detrimental to the environment) procedures in Schedule 7 must be followed. Schedule 7 prescribes the process of conducting an environmental impact assessment (EIA).

When an application is approved (granted) the environmental authority may introduce conditions. These conditions may require the applicant to establish a fund or provide a guarantee for mitigating any environmental damage that may be caused by the proposed use or development of land. It may also require the applicant to provide periodic reports on an assessment of the accuracy of the initial impact predictions and a statement on the success or failure of any mitigatory measures that may have been required.

The Minister may on his/her own initiative or at the request of any person, with the consent of the Cabinet identify areas or features as special case areas or features according to section 48. This can include sensitive, vulnerable, highly dynamic or stressed ecosystems as contemplated in section 2(4)(r) of the National Environmental Management Act (107 of 1998).

The Minister may for special case area of feature prescribe special procedures that will be compulsory to follow, including additional procedures for the approval of development in these areas. The Minister have the power to prescribe advisory or management bodies necessary to ensure the conservation, protection or preservation of these areas or features.

5.7 PUBLIC PARTICIPATION

Since the democratisation of South Africa in 1994 public participation has received much attention. The cornerstone of this process is the Bill of Rights in the Constitution (108 of 1996). It places emphasis on the rights of every South African, the right to information and just administrative action.

The process of public participation in spatial planning is one of the elements that are extensively covered in all the provincial acts. Long-term planning and land use management makes it compulsory to consult the public in the preparing as well as implementing any plans, bodies, institutions and mechanisms.

The public is given the right to appeal to different bodies and institutions if any person or body of persons is not satisfied with a decision taken relation to planning and development of land.

CHAPTER 6

EVALUATION

6.1 INTRODUCTION

The planning systems created through the introduction of the different act, bills and drafts were analysed in Chapter 5. For the analysis to have value it is necessary to conduct a comparison and evaluation. The differences and similarities can be compared and measured against criteria. This chapter will conduct an evaluation in terms of:

- principles,
- long-term planning,
- land development management,
- institutions,
- protection of the environment and
- public participation.

The differences, if any, can help identify mechanisms and institutions that might be introduced in other provinces, to the advantage of planning systems throughout South Africa. This can be very important contribution especially when taking into consideration that five provinces still have not introduced planning law.

6.2 PRINCIPLES

The normative principles introduced by the different provinces is summarised in Table 6.1.

TABLE 6.1
PRINCIPLES COMPARISON

PRINCIPLES	WESTERN CAPE PLANNING AND DEVELOPMENT ACT (7 OF 1999)	NORTHERN CAPE DEVELOPMENT AND PLANNING ACT (7 OF 1998)	GAUTENG PLANNING AND DEVELOPMENT BILL (FINAL DRAFT 2000)	KWAZULU-NATAL PLANNING AND DEVELOPMENT BILL (2001)
Introduce principles	yes	yes	yes	yes
Adopted DFA principles		yes		
Reworded DFA principles	yes		yes	
Created province specific principles				*yes in Act 5 of 1998 *status in preamble not certain
Principles considered in long-term planning mechanisms	yes	yes	yes	yes
Principles considered in land development management mechanisms	yes	yes	yes	yes

It is clear that most of the general principles of the provinces' legislation is only a rewording and reordering of the Development Facilitation Act's (67 of 1995) general principles. Two of the provinces, Gauteng and the Western Cape only reworded the principles of the Development Facilitation Act (67 of 1995) while the Northern Cape adopted the principles from the DFA. KwaZulu-Natal was the only province to make the principles more province specific but with the introduction of the new KwaZulu-Natal Planning and Development Bill the principles do not have the same status.

The intent of the Development Facilitation Act by giving provinces the power to adopt principles that would be province specific, has failed. Through an investigation in spatial planning practices by the Development and Planning Commission (established in terms of the DFA) it was revealed that the principles had not yet had a major impact on planning products since its introduction. It only weakly informed planning and land-related decision-making.

The reason for this failure has been identified in the Green Paper on Development and Planning. The main reason is the lack of knowledge and the difficulties in interpreting the principles. The other reason was the attempt to achieve outcomes through an indirect means, but the principles were not "self-executing" in influencing the way in which laws were interpreted. It is clear that principles must be incumbent on authorities to have effect.

6.3 LONG-TERM PLANNING

Long-term planning as the pro-active mechanism for spatial planning is compulsory in all the provincial acts as shown in Table 6.2. The exception is KwaZulu-Natal where no specific plan must be prepared on provincial and regional level.

It is clear that provinces devolve the power to local government, and thus fulfil a role of coordination and regulation. All the provinces are clear on the relationship between long-term plans and integrated development plans.

TABLE 6.2
LONG-TERM PLANNING COMPARISON

LONG-TERM PLANNING	WESTERN CAPE PLANNING AND DEVELOPMENT ACT (7 OF 1999)	NORTHERN CAPE DEVELOPMENT AND PLANNING ACT (7 OF 1998)	GAUTENG PLANNING AND DEVELOPMENT BILL (FINAL DRAFT 2000)	KWAZULU-NATAL PLANNING AND DEVELOPMENT BILL (2001)
compulsory provincial plan	integrated development framework (IDF)	provincial plan	Gauteng integrated development framework (IDF)	no but can prepare policies on planning, development and environmental management
compulsory regional plan	not compulsory but may prepare sectoral plan	district council prepare a district council plan	district council prepare a district spatial development framework	no
compulsory local plan	integrated development framework (IDF) and spatial plan Not compulsory but may prepare sectoral plans	land development plan	spatial development framework	land use and environmental management plan
define relationship to integrated development plan (IDP as provided for in Municipal Systems Act (32 of 2000))	yes, all plans prepared as part of an IDP, for the exception of a IDF – forms the broad framework in which IDP must be prepared	yes all plans prepared as part of an IDP	yes all plans prepared as part of an IDP	yes all plans prepared as part of IDP

The alignment of the plans with budgetary and fiscal resources is emphasised in the Northern Cape and KwaZulu-Natal's Acts. It is however not that clear in the case of the other provinces.

The relationship with Land Development Objectives (LDO's) is not clear in all the acts and the Gauteng Act clearly states that land development objectives will have no effect on any plans implemented, while the KwaZulu-Natal act does not even mention land development objectives. This can be explained through the development of policies on national level. The Green Paper followed by the White Paper on Spatial Planning recommends that Land Development Objectives be integrated in spatial planning and through the repeal of the

Development Facilitation Act (67 of 1995) by the Land Use Management Act the Land Development Objectives be repealed.

6.4 LAND DEVELOPMENT MANAGEMENT

Land development management is the control mechanism for spatial planning. These mechanisms introduced by the different Acts and Bills is summarised in Table 6.3.

TABLE 6.3
LAND USE MANAGEMENT COMPARISON

LAND DEVELOPMENT MANAGEMENT	WESTERN CAPE PLANNING AND DEVELOPMENT ACT (7 OF 1999)	NORTHERN CAPE DEVELOPMENT AND PLANNING ACT (7 OF 1998)	GAUTENG PLANNING AND DEVELOPMENT BILL (FINAL DRAFT 2000)	KWAZULU-NATAL PLANNING AND DEVELOPMENT BILL (2001)
provision for a zoning scheme	zoning scheme	zoning scheme	land use management scheme	land use and environmental management plan
provision for subdivision	yes	yes	yes	yes
provision for removal of restrictions	yes	yes	yes	yes
provision for accelerated development	yes	yes	yes	yes
provision for public comments on proposed land use and development	yes	yes	yes	yes
provision for compensation	yes	yes	yes	yes
provision for appeal against decision	yes	yes	yes	yes
provision for laps if use is not utilised	yes departure -3 years rezoning -3 years subdivision -5 years	yes within 2 years	yes within time frame decided on	yes within 18 months

Zoning schemes are introduced in the Western Cape and the Northern Cape. Although zoning schemes is not introduced in Gauteng and KwaZulu-Natal, the function of a zoning scheme is performed through a land use management scheme and a land use and environmental management plan.

All the provinces make provision for accelerated development that forms a crucial part of spatial planning (especially in addressing the imbalances of the past) in providing speedy low-income developments.

6.5 INSTITUTIONS/BODIES

Institutions introduced in the different provinces are compared in Table 6.4. The Western Cape is the only province who did not introduce institutions as prescribed in the Development Facilitation Act (67 of 1995). Instead the province introduced a planning review board to fulfil the function, however although the name of the appeal body is different in the Western Cape, its purpose and functions is similar to the other provinces.

TABLE 6.4
INSTITUTIONS/BODIES COMPARISON

INSTITUTIONS OR BODIES	WESTERN CAPE PLANNING AND DEVELOPMENT ACT (7 OF 1999)	NORTHERN CAPE DEVELOPMENT AND PLANNING ACT (7 OF 1998)	GAUTENG PLANNING AND DEVELOPMENT BILL (FINAL DRAFT 2000)	KWAZULU-NATAL PLANNING AND DEVELOPMENT BILL (2001)
advisory	technical advisory committee joint committee panel of mediators	Northern Cape planning and development commission forum for co-operative planning and development working groups	Gauteng development and planning commission	consultative committees panel of mediators
ratification	municipality	municipality	planning committees Gauteng development tribunal	responsible authority environmental authority development tribunal
appeal	planning review board	appeal tribunal	development appeal tribunal	planning and development appeal tribunal

All the provinces introduce an appeal tribunal or board as in the case of the Western Cape. Gauteng introduced a development tribunal to hear and decide on development applications (as specified by the MEC).

On the local level Gauteng introduced an additional institution to help local governments with the implementation of planning related matters. The planning committee will receive and decide on all development and land use change application.

KwaZulu-Natal makes provision for local authorities to be designated as an environmental authority to hear and decide on any application that requires an environmental impact assessment (EIA).

6.6 PROTECTION OF THE ENVIRONMENT

The way in which the different provinces deal with the protection of the environment is shown in Table 6.5.

Overlay zoning, a mechanism that form part of the zoning scheme can be implemented to give special protection to the natural, cultural and historic environment is introduced in the Western Cape and KwaZulu-Natal.

In KwaZulu-Natal special case areas as identified by the Minister can give added protection to the environment, by adding additional conditions for development in such an area. Special provision is made in Schedule 7 for the identification of any proposed development that may have a detrimental effect on the environment. Such an activity is subjected to an environmental impact assessment as prescribed in Schedule 8 before consideration will be given to the application.

TABLE 6.5
PROTECTION OF THE ENVIRONMENT COMPARISON

PROTECTION OF THE ENVIRONMENT	WESTERN CAPE PLANNING AND DEVELOPMENT ACT (7 OF 1999)	NORTHERN CAPE DEVELOPMENT AND PLANNING ACT (7 OF 1998)	GAUTENG PLANNING AND DEVELOPMENT BILL (FINAL DRAFT 2000)	KWAZULU-NATAL PLANNING AND DEVELOPMENT BILL (2001)
provision made for environment protection in principles	yes	yes	yes	yes
consideration given to the environment in long-term planning	yes	yes	yes	yes
consideration given to the environment in land use management mechanisms	yes	yes	yes	yes
special mechanisms or institutions to protect the environment	environmental plan overlay zoning bioregional planning	MEC can make regulations for protecting the environment	none	special case areas or features overlay zoning environmental authority

The Western Cape introduce a special mechanisms - bioregional planning to integrate spatial planning with sustainable environmental management.

A deficiency in all the provincial Acts and Bills is that no mechanism is introduced to incorporate the 21 and 26 regulations of the National Environmental Management Act (107 of 1998). This need to be urgently resolved to ensure integrated planning.

6.7 PUBLIC PARTICIPATION

Public participation is the one aspect that is extensively covered in all the provincial Acts and Bills. This is a positive aspect in that it will ensure that all institutions and procedures are recognised by the public, and that democratisation will be deepened in spatial planning. Public participation can be identified in the different provisions of the Acts and Bills in Table 6.6.

TABLE 6.6
PUBLIC PARTICIPATION COMPARISON

PUBLIC PARTICIPATION	WESTERN CAPE PLANNING AND DEVELOPMENT ACT (7 OF 1999)	NORTHERN CAPE DEVELOPMENT AND PLANNING ACT (7 OF 1998)	GAUTENG PLANNING AND DEVELOPMENT BILL (FINAL DRAFT 2000)	KWAZULU-NATAL PLANNING AND DEVELOPMENT BILL (2001)
provision made for public participation in principles	yes	yes	yes	yes
public participation is part of long-term planning	yes	yes	yes	yes
public participation is part of land use management mechanisms	yes	yes	yes	yes
public is given the right to appeal	yes	yes	yes	yes

6.8 CONCLUSION

Through the evaluation of the different aspect according to criteria it can be concluded that there are many similarities between the different provincial planning systems. The differences are mainly in terminology and small matters such as the time limit to the utilisation of a land use or development (if approved).

CHAPTER 7

SYNTHESIS AND CONCLUSION

The hypothesis is confirmed that provincial planning is moving toward conformity. Systems and mechanisms introduced by the different Acts and Bills have been through an extensive analysis, comparison and evaluation found to be similar.

The proposed Land Use Management Act (currently the Land Use Management Bill) was introduced after these provincial Acts and Bills were drawn up. The Land Use Bill is a national attempt to introduce a single system of spatial planning for South Africa by standardising terminology, institutions and mechanisms. Planning as a function of province is very important and should remain a provincial function

It is in the opinion of the researcher that the Department of Land Affairs as the departmental “home” of spatial planning should utilise the Act as a mechanism to support the remaining five provinces who have not yet introduced new planning laws. A unified law introduced on national level could be a move in the right direction, but it seems that the Bill was hastily compiled and does not introduce a better systems or institutions than any of the provincial Acts of Bills.

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PERSONAL COMMUNICATIONS

Mr Terreblanche, H. Director of the Free State Provincial Department for Housing and Local Government, June 22 2001.